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2011

JUSTICES OF THE PEACE REVIEW COUNCIL

ONTARIO

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The Honourable Annemarie E. Bonkalo

CHIEF JUSTICE
ONTARIO COURT OF JUSTICE

Chair, Justices of the Peace Review Council

JUSTICES OF THE PEACE REVIEW COUNCIL

March 22, 2013

The Honourable John Gerretsen
Attorney General for the Province of Ontario
720 Bay Street, 11th Floor
Toronto, Ontario
M5G 2K1

Dear Minister:

It is my pleasure to submit the Fifth Annual Report of the Justices of the Peace Review Council concerning its operations throughout 2011, in accordance with subsection 9(7) of the *Justices of the Peace Act*.

The period of time covered by this Annual Report is from January 1, 2011 to December 31, 2011.

Respectfully submitted,

Annemarie E. Bonkalo
Chief Justice
Ontario Court of Justice

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INTRODUCTION

The period of time covered by this Annual Report is from January 1, 2011 to December 31, 2011. This report is the Fifth Annual Report on the work of the Justices of the Peace Review Council.

Justices of the peace play an important role in the administration of justice in Ontario. They are appointed by the Province of Ontario and have their duties assigned by a Regional Senior Justice or a Regional Senior Justice of the Peace. They routinely conduct trials under the *Provincial Offences Act* and preside over bail hearings. They also perform a number of other judicial functions, such as issuing search warrants. Justices of the peace do difficult, important work in the justice system. A justice of the peace may be the only judicial officer that a citizen will encounter in his or her lifetime.

The Justices of the Peace Review Council is an independent body established by the Province of Ontario under the *Justices of the Peace Act* with a mandate to receive and investigate complaints about justices of the peace and to fulfill other functions as described in this report. The Review Council does not have the power to interfere with or change a decision made by a justice of the peace. Those are matters to be pursued through other legal remedies before the courts.

The *Act* provides for the Council to make an Annual Report to the Attorney General on its affairs, including case summaries about complaints. The report may not include information that identifies a justice of the peace, a complainant or a witness unless a public hearing has occurred.

This Fifth Annual Report of the Review Council provides information on its membership, its functions and the work of the Council during 2011. The Annual Report also includes information on the procedures used to address complaints. Information is also included on applications for approval to engage in extra-remunerative activities, although names of applicants are confidential.

The Review Council had jurisdiction over approximately 395 provincially-appointed justices of the peace, full-time and part-time and *per diem*, during the period of time covered by this Annual Report. During 2011, the Council received 52 new complaints about justices of the peace, and carried over 37 from previous years. Information about the 33 complaint files that were completed and closed in 2011 is included in this Report.

We invite you to find out more about the Council by reading this Annual Report, and by visiting its website at www.ontariocourts.on.ca/jprc/en/. On the website, you will find the Council's current policies and procedures; updates about any public hearings that are in progress or that have been completed after this Report was prepared; the *Principles of Judicial Office;* the Education Plan; and links to the governing legislation.

1. COMPOSITION AND TERMS OF APPOINTMENT

The Justices of the Peace Review Council is an independent body established under the *Justices of the Peace Act*. The Review Council has a number of functions which are described in this section, including the review and investigation of complaints about the conduct of justices of the peace.

The Review Council includes judges, justices of the peace, a lawyer and four community representatives:

- the Chief Justice of the Ontario Court of Justice, or another judge of the Ontario Court of Justice designated by the Chief Justice;
- the Associate Chief Justice Co-ordinator of Justices of the Peace;
- three justices of the peace appointed by the Chief Justice of the Ontario Court of Justice;
- two judges of the Ontario Court of Justice appointed by the Chief Justice of the Ontario Court of Justice;
- one regional senior justice of the peace appointed by the Chief Justice of the Ontario Court of Justice;
- a lawyer appointed by the Attorney General from a list of three names submitted to the Attorney General by the Law Society of Upper Canada; and,
- four persons appointed by the Lieutenant Governor in Council on the recommendation of the Attorney General.

In the appointment of community members, the importance is recognized of reflecting, in the composition of the Review Council as a whole, Ontario's linguistic duality and the diversity of its population and ensuring overall gender balance.

When the Council was established in its current form in 2007, to provide for staggered terms among the members of the Council, initially the lawyer and one community person were appointed for a six-year term, one community person for a two-year term and the remaining two community members for four-year terms. After those members complete their terms, lawyer and community members who are appointed to the Council hold office for four-year terms and are eligible for reappointment. Judicial members on the Council are appointed by the Chief Justice of the Ontario Court of Justice.

2. MEMBERS

The membership of the Review Council in the year covered by this report (January 1, 2011 to December 31, 2011) was as follows:

Judicial Members:

CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE

The Honourable Annemarie E. Bonkalo ..... (Toronto)

ASSOCIATE CHIEF JUSTICE CO-ORDINATOR OF
JUSTICES OF THE PEACE OF THE ONTARIO COURT OF JUSTICE

The Honourable John A. Payne..... (Durham/Toronto)

THREE JUSTICES OF THE PEACE APPOINTED BY THE
CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE:

Senior Justice of the Peace Cornelia Mews ..... (Newmarket/Toronto)

His Worship Warren Ralph ..... (Toronto)

Her Worship Louise Rozon ..... (Cornwall)

TWO JUDGES OF THE ONTARIO COURT OF JUSTICE APPOINTED
BY THE CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE:

The Honourable Justice Ralph E. W. Carr.....(Timmins)

The Honourable Justice Charles H. Vaillancourt ..... (Toronto)

REGIONAL SENIOR JUSTICE OF THE PEACE APPOINTED
BY THE CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE:

Regional Senior Justice of the Peace Kathleen M. Bryant .....(Sault Ste. Marie)

Lawyer Member:

Ms. S. Margot Blight ..... (Toronto)
Borden Ladner Gervais LLP

Community Members:

Dr. Emir Crowne ..... (Windsor)
Associate Professor, Faculty of Law, University of Windsor

Ms. Cherie A. Daniel ..... (Toronto)
Lawyer

Dr. Michael S. Phillips ..... (Gormley)
Consultant, Mental Health and Justice

Mr. Steven G. Silver ..... (Gananoque)
Retired, Chief Administrative Officer, United Counties of Leeds & Grenville

Members – Temporary:

Subsection 8(10) of the *Justices of the Peace Act* permits the Chief Justice of the Ontario Court of Justice to appoint a judge or a justice of the peace to be a temporary member of the Justices of the Peace Review Council of a complaints committee or hearing panel where it is necessary in order to meet the requirements of the *Act*. During the period covered by this report, the following members were temporary members:

The Honourable Justice Guy F. DeMarco ..... (Windsor)

His Worship Maurice Hudson ..... (Brampton)

3. ADMINISTRATIVE INFORMATION

Separate office space adjacent to the Office of the Chief Justice in downtown Toronto is utilized by both the Ontario Judicial Council and the Justices of the Peace Review Council. The proximity of the Councils' office to the Office of the Chief Justice permits both Councils to make use of financial, human resources, and technology support staff, as needed, and computer systems without the need of acquiring a large staff.

Councils' offices are used for meetings of both Councils and their members, and as needed for meetings with judicial officers that may result as part of the disposition of complaints. The Councils have a shared telephone reception and fax number. They share a toll-free number for the use of members of the public across the province of Ontario and a toll-free number for persons using TTY/teletypewriter machines.

During the period covered by this report, the staff of the Ontario Judicial Council and the Justices of the Peace Review Council consisted of a Registrar, two Assistant Registrars and an Administrative Secretary:

Ms. Marilyn E. King, LL.B. – *Registrar*

Mr. Thomas A. Glassford – *Assistant Registrar*

Ms. Ana M. Brigido – *Assistant Registrar*

Ms. Janice Cheong – *Administrative Secretary*

4. FUNCTIONS OF THE REVIEW COUNCIL

The *Justices of the Peace Act* provides that the functions of the Review Council are:

- to establish complaints committees from amongst its members to receive and investigate complaints about justices of the peace, and decide upon dispositions under section 11(15);
- to hold hearings under section 11.1 when hearings are ordered by complaints committees pursuant to section 11(15);
- to review and approve standards of conduct;
- to consider applications under section 5.2 for the accommodation of needs;
- to deal with continuing education plans; and,
- to decide whether a justice of the peace who applies for approval to engage in other remunerative work may do so.

The Review Council does not have the power to interfere with or change a decision made by a justice of the peace. If a person believes that a justice of the peace made an error in assessing evidence or in making a decision on any of the issues, the proper way to proceed is through other legal remedies before the courts, such as an appeal.

Under section 10(1) of the *Justices of the Peace Act*, the Review Council may establish rules of procedure for complaints committees and for hearing panels and the Review Council must make the rules available to the public. The Review Council has established Procedures containing rules for the complaints process which are posted on its website at the link for "Policies and Procedures" at: www.ontariocourts.ca/ocj/jprc/policies-and-procedures/procedure/.

During 2011, the Council continued to refine and develop its Procedures and policies. The Council also determined that it has no jurisdiction under the *Justices of the Peace Act* to grant the withdrawal of a complaint. An amendment to the Procedures was made to reflect this decision.

An amendment was made to incorporate the Council's policy that if a complaint raises allegations of conduct about a justice of the peace who is presiding over a court proceeding, the Council will not generally commence an investigation until that court proceeding and any appeal or other related legal proceedings have been completed. This will ensure that any investigation by the Council is not interfering or perceived to be interfering with any on-going court matters.

An amendment was made to reflect the role that the complaints process has in maintaining and restoring public confidence, and to clarify that the legislative requirements for maintaining privacy no longer apply for formal hearings under section 11.1 of the *Act*. An amendment was made to make it clear that once Presenting Counsel files the Notice of Hearing as an exhibit in the initial set-date proceeding presided over by a hearing panel, the complaints process will become public, subject to any orders by the hearing panel. In addition, an amendment was made to direct that once a complaint has become public, the Registrar will have notice about the hearing posted in the prescribed form on the Council's website, subject to any orders of the hearing panel. Not less than two weeks prior to the commencement of the hearing, the Registrar will have notice about the hearing in the prescribed form published in the local newspaper. The public notice will include a brief summary of the allegations of conduct. The public notice must not identify complainants or witnesses, due to the possibility that a complainant or witness could bring a motion in the proceeding for an order of non-publication of his or her identity. The hearing panel may, on such grounds as it deems appropriate, abridge the time for publication of notice about the hearing.

A provision was added to clarify that in situations where a hearing has been ordered under section 11(15) (c) of the *Justices of the Peace Act*, notice will be provided on the website to the media and members of the public of any motions for a publication ban for an *in camera* (private) hearing. The amendment provided that a motion for a publication ban or for part or all of a hearing to be held in private must be made at least ten calendar days before the set-date for the hearing.

Section 5.2 of the *Justices of the Peace Act* provides that a justice of the peace who believes that he or she is unable, because of a disability, to perform the essential duties of office unless his or her needs are accommodated may apply to the Council for an order that those needs be accommodated to the extent necessary to enable him or her to perform the essential duties. The Procedures were amended to make clear the Council's jurisdiction when making such an order. The Council has no jurisdiction to order that a justice of the peace should be accommodated by assigning him or her to only a portion of the essential duties of the office of a justice of the peace.

The role of the Council must be viewed within the legislative framework of the *Justices of the Peace Act* and the legislated authority of the Regional Senior Justice under the direction of the Chief Justice of the Ontario Court of Justice pursuant to section 15(1) to direct and supervise the sittings of the justices of the peace in his or her region and the assignment of their judicial duties. The Supreme Court of Canada has recognized that one characteristic fundamental to judicial independence is institutional independence with respect to matters of administration bearing directly on the exercise of the judicial function: *Valente* v *The Queen*, [1985] 2 S.C.R. 673 at 686-87; 1985 CanLII 25 (SCC). Judicial control over such matters as assignment of judges and justices of the peace, sittings of the court and court lists has been considered the essential or minimum requirement for institutional independence.

While the Council cannot assume the responsibility of assignment of judicial duties, the Council can consider whether, as a result of a disability, a justice of the peace is able to perform the essential duties of the office if his or her needs are accommodated. Subsection 5.2(2) does not apply if the Review Council is satisfied that making an order would impose undue hardship on the person responsible for accommodating the needs of the justice of the peace, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

A copy of the Council's current procedures for the complaints process that incorporates the amendments made during 2011 is posted on the Review Council's website under the link "Policies and Procedures" www.ontariocourts.ca/ocj/jprc/policies-and-procedures/procedure/.

5. EDUCATION PLAN

The Associate Chief Justice Co-ordinator of Justices of the Peace of the Ontario Court of Justice is required, by section 14 of the *Justices of the Peace Act*, to establish, implement and make public a plan for the continuing judicial education of justices of the peace. The education plan must be approved by the Justices of the Peace Review Council. In 2007, a continuing education plan was developed by the Associate Chief Justice Co-ordinator of Justices of the Peace in conjunction with the Advisory Committee on Education. The Committee includes the Associate Chief Justice Co-ordinator of Justices of the Peace as Chair *(ex officio)* and justices of the peace nominated by the Associate Chief Justice Co-ordinator of Justices of the Peace and by the Association of Justices of the Peace of Ontario. The continuing education plan was revised and approved by the Justices of the Peace Review Council on November 28, 2008. A copy of the continuing education plan can be found on the Council's website under the link "Education Plan" at www.ontariocourts.ca/ocj/jprc/education-plan/.

6. STANDARDS OF CONDUCT

The Associate Chief Justice Co-ordinator of Justices of the Peace may, under section 13(1) of the *Justices of the Peace Act*, establish standards of conduct for justices of the peace and a plan for bringing the standards into effect and must implement the standards and plan when they have been reviewed and approved by the Review Council.

The *Principles of Judicial Office for Justices of the Peace of the Ontario Court of Justice* were approved by the Justices of the Peace Review Council on December 7, 2007. The principles set out standards of excellence and integrity to which justices of the peace subscribe. These principles are not exhaustive. Intended to assist justices of the peace in addressing ethical and professional dilemmas, they may also serve in assisting the public to understand the reasonable expectations which the public may have of justices of the peace in the performance of judicial duties and in their conduct generally. The principles are designed to be advisory in nature and are not directly related to any specific disciplinary process.

A copy of the *Principles of Judicial Office for Justices of the Peace of the Ontario Court of Justice* is included as Appendix C in this Annual Report and can be found on the Council's website under the link for "Principles of Judicial Office" at:
www.ontariocourts.ca/ocj/jprc/principles-of-judicial-office/.

7. EXTRA-REMUNERATIVE WORK

Under section 19 of the *Justices of the Peace Act*, all justices of the peace are required to seek the written approval of the Review Council before accepting or engaging in any extra-remunerative work. In 1997, the former Justices of the Peace Review Council approved a policy regarding extra-remunerative work in which justices of the peace may engage. On November 23, 2007, the newly constituted Review Council approved the policy regarding other remunerative work.

Applications received from justices of the peace to engage in other remunerative work are considered in accordance with the Council's policy. The policy applies to all justices of the peace, full-time and part-time and *per diem*. The policy sets out criteria that are used in assessing applications including:

- whether there is an actual, or perceived, conflict of interest between the duties as assigned and the extra-remunerative activity for which approval is sought;

- whether the nature of the activity for which the justice of the peace seeks approval will present an intrusive demand on the time, availability or energy of the justice of the peace and his or her ability to properly perform the judicial duties assigned; and,
- whether the activity for which the justice of the peace seeks approval is a seemly or appropriate activity in which a judicial officer should engage, having regard to the public perceptions of judicial demeanour, independence and impartiality.

In 2010, the Council determined that in considering applications to engage in extra-remunerative work, it would look at two aspects in relation to remuneration associated with the work. Firstly, the Council considers whether the work gives rise to any remuneration to the applicant justice of the peace. Secondly, the Council considers that a justice of the peace is engaged in extra-remunerative work when that justice of the peace is a party to someone else's remunerative work. Once the Council has established whether there is any remuneration, the policy and criteria set out in the Council's extra-remunerative policy are considered. The *Policy of the Justices of the Peace Review Council Re Extra-Remunerative Work* was amended to reflect the Council's decision.

One criterion to be considered by the Council in considering applications is whether the activity for which the justice of the peace seeks approval is a seemly or appropriate activity in which a judicial officer should engage, having regard to the public perceptions of judicial demeanour, independence and impartiality (paragraph 6(c) of the *Policy Re Extra-Remunerative Work)*. The Council has considered how that criterion should be applied and determined that it must be understood in the context of the public policy encapsulated in the legislative framework set out in the *Justices of the Peace Act* R.S.O. 1990, c. J.4, as amended and, in particular, in view of the amendments that resulted from the *Access to Justice Act*, 2006, S.O. 2006, c. 21. The Council noted that the legislative amendments brought about a comprehensive reform intended to strengthen public confidence in a professional bench and in the justice system.

Having carefully considered the public policy underlying the current legislative framework, the objectives of the amendments underlying the *Access to Justice Act*, 2006, and the P*rinciples of Judicial Office of Justices of the Peace of the Ontario Court of Justice*, the Review Council determined that it would in general be unseemly for full-time presiding justices of the peace to be engaged in commercial extra-remunerative work. The *Policy Re Extra-Remunerative Work* was amended to reflect the Council's decision.

The Review Council has approved some applications to extra-remunerative work by full-time presiding justices of the peace on an exceptional basis in limited circumstances where the activity was primarily non-commercial and had other intrinsic value from an educational, patriotic, religious or creative standpoint. In accordance with the Council's policy and procedure, an

applicant who seeks approval to engage in commercial activity must address the issue of why the application for extra-remunerative work should be approved as an exception to the general policy that full-time presiding justices of the peace should not engage in extra-remunerative work that is commercial in nature.

The *Policy on Extra-Remunerative Work* is included as Appendix B in this Annual Report. The most recent version is posted on the Council's website under the link "Policies and Procedures" at: www.ontariocourts.ca/ocj/jprc/policies-and-procedures/extra-remunerative-work/.

Summary of Extra-Remunerative Files Closed in 2011

During 2011, the Council received four applications for approval to engage in extra-remunerative work and completed its consideration of all four applications. Case summaries for the extra-remunerative files that were completed in 2011 can be found at Appendix B in this Annual Report.

8. COMMUNICATIONS

The website of the Justices of the Peace Review Council includes information about the Council, including the most current version of the policies and procedures, as well as information about hearings that are underway or that have been completed. Copies of "Judicial Inquiry Proceedings" held under the former legislation and "Reasons for Decision" from any public hearings held under the current legislation are posted on the website when released. Each Annual Report of the Council is also available on the website after it has been tabled in the legislature by the Attorney General.

The address of the Council's website is: www.ontariocourts.ca/ocj/jprc/.

A brochure to inform the public about the process to make complaints about judges and justices of the peace is available in hard copy at courthouses or by contacting the Council's office, and electronically on the website at www.ontariocourts.ca/ocj/conduct/do-you-have-a-complaint/. The brochure, *"Do You Have a Complaint?"* provides information on what a justice of the peace does, on how to tell whether the presiding judicial officer is a judge or a justice of the peace, and on how to make a complaint about conduct.

9. ACCOMMODATION OF NEEDS ARISING FROM A DISABILITY

A justice of the peace who believes that he or she is unable, because of a disability, to perform the essential duties of the office unless his or her needs are accommodated may apply to the Council under section 5.2 of the *Justices of the Peace Act* for an order that such needs be accommodated.

The current procedure that governs such applications is included in the Council's Procedure which is posted on the website at:
http://www.ontariocourts.ca/ocj/jprc/accessibility-and-accommodation/

During 2011, no applications for accommodation were considered by the Council.

10. OVERVIEW OF THE COMPLAINTS PROCESS

What initiates a review by the Review Council?

Any person may make a complaint to the Review Council about the conduct of a justice of the peace. Complaints must be made in writing and signed by the complainant. The governing legislation and the principles of natural justice do not provide for the Review Council to act on anonymous complaints or to initiate inquiries into the conduct of a judicial officer. Rather, an investigation conducted by the Review Council must be in response to specific allegations submitted by a complainant. Most of the complaints received by the Justices of the Peace Review Council are received from members of the public.

Does the Council have the legal authority to consider the complaint?

The Review Council has a legislative mandate to review complaints about the **conduct** of justices of the peace. The Council has no authority to review **decisions** of justices of the peace to determine whether there were any errors in how the issues were determined or how conclusions were drawn. If a party involved in a court case thinks that a justice of the peace reached the wrong decision in the case, he or she has legal remedies through the courts. Only a court can change the original decision of a justice of the peace.

All correspondence is reviewed to determine whether or not a complaint is within the jurisdiction of the Review Council. In those cases where the complaint may be within the jurisdiction of the Review Council, a complaint file is opened and a letter of acknowledgement is sent to the complainant, usually within a week of his or her letter being received by the Council.

If the complainant expresses dissatisfaction with a decision that has been made by a justice of the peace, the letter of acknowledgement advises the complainant that the Council has no power to change a decision made by a justice of the peace. In such cases, the complainant is advised that he or she may wish to consult legal counsel to determine what, if any, remedies may be available through the courts.

If an individual is complaining about his/her lawyer or a Crown Attorney, or another office, the complainant is generally referred to the appropriate agency or authorities.

What happens in the complaints process?

The *Justices of the Peace Act* and the procedures that have been established by the Council provide the current framework for addressing complaints about justices of the peace. If a complaint is ordered to a public hearing, certain provisions of the *Statutory Powers Procedure Act* also apply. The complaints procedure is outlined below. The current procedures are posted on the Council's website at: www.ontariocourts.ca/ocj/jprc/policies-and-procedures/procedure/.

Preliminary Investigation and Review

As soon as possible after receiving a complaint about the conduct of a justice of the peace, the office of the Council will acknowledge receipt of the complaint. If the complaint raised allegations of conduct about a justice of the peace who is presiding over a court proceeding, the Council will not generally commence an investigation until that court proceeding and any appeal or other related legal proceedings have been completed. This will ensure that any investigation by the Council is not interfering or perceived to be interfering with any on-going court matters.

If there is no on-going court proceeding, a complaints committee of the Council will be assigned to investigate the complaint. Members of the Council serve on complaints committees on a rotating basis. Each complaints committee is composed of: a provincially appointed judge who acts as chair; a justice of the peace; and, either a community member or a lawyer member. Complaints are not generally assigned to members from the same region where the justice of the peace who is the subject of the complaint presides. This avoids any risk of or perception of bias or conflict of interest between a member of Council and the justice of the peace.

Except for hearings ordered under section 11(15)(c) of the *Justices of the Peace Act* to consider complaints about specific justices of the peace, meetings and proceedings of the Review Council are not held in public. Section 11(8) of the *Act* requires that investigations by the Review Council must be conducted in private. The legislative framework recognizes the need to safeguard judicial independence while simultaneously ensuring judicial accountability and public confidence in the administration of justice.

If the complaint arose from a court proceeding, usually a transcript of the court hearing is ordered to be reviewed by the members of the complaints committee. An audio recording, if available, may also be ordered and reviewed. In some cases, the committee may find that it is

necessary to conduct further investigation in the form of having witnesses interviewed. An external lawyer may be retained, pursuant to section 8(15) of the *Act*, on behalf of the Review Council to interview witnesses and provide a report to the investigating complaints committee.

The complaints committee will determine whether or not a response to the complaint should be invited from the justice of the peace in question. If a response is invited from the justice of the peace, the letter sent from the Review Council inviting a response will enclose a copy of the complaint, the transcript (if any) and all of the relevant materials considered by the committee. The justice of the peace may seek independent legal advice or assistance before responding. The justice of the peace will also be invited to listen to the audio recording, if it has been reviewed by the committee.

Section 11(15) of the *Justices of the Peace Act* gives the complaints committee the authority to dismiss a complaint after reviewing the complaint where, in the opinion of the committee: it is frivolous or an abuse of process; it falls outside the Council's jurisdiction (e.g. because it is a complaint about the exercise of judicial discretion); it does not include an allegation of judicial misconduct; the allegation is unproven; or, the misconduct does not rise to the level of misconduct that requires further action on the part of the Council.

Interim Recommendations

The investigating complaints committee will consider whether the allegation(s) warrants making an interim recommendation pending the final disposition of a complaint. Under section 11(11) of the *Act*, an interim recommendation for non-assignment of work or re-assignment to work at another court location may be made to the Regional Senior Justice appointed for the region to which the justice of the peace is assigned. The Regional Senior Justice may decide not to assign work to the justice of the peace until the final disposition (but he or she will continue to be paid); or, with the consent of the justice of the peace, may re-assign him or her to another location until the disposition of the complaint. It is within the discretion of the Regional Senior Justice as to whether he or she decides to act upon the recommendation from a complaints committee.

The Review Council has approved the following criteria in the procedures to guide complaints committees as to when an interim recommendation should be made:

- where the complaint arises out of a working relationship between the complainant and the justice of the peace and the complainant and the justice of the peace both work at the same court location;

- where allowing the justice of the peace to continue to preside would likely bring the administration of justice into disrepute;
- where the complaint is of sufficient seriousness that there are reasonable grounds for investigation by law enforcement agencies;
- where it is evident to the complaints committee that a justice of the peace is suffering from a mental or physical impairment that cannot be remedied or reasonably accommodated.

Where a complaints committee proposes to recommend temporarily not assigning work or re-assigning a justice of the peace to work at a different court location, it may give the justice of the peace an opportunity to be heard on that issue in writing before making its decision. Particulars of the factors upon which the complaints committee's recommendations are based are provided to the Regional Senior Judge to assist the Regional Senior Judge in making his or her decision, and to the justice of the peace to provide him or her with notice of the complaint and the complaints committee's recommendation.

Of the complaint files that were completed by the Council during 2011, complaints committees made recommendations that one justice of the peace be re-assigned to a location other than where the complaint arose. The Regional Senior Justice agreed with the recommendation.

Dispositions of the Complaints Committee

When the investigation is completed, pursuant to section 11(15) of the *Act*, the complaints committee will do one of the following:

a) dismiss the complaint if it is frivolous, an abuse of process or outside the jurisdiction of the complaints committee;

b) invite the justice of the peace to attend before the complaints committee to receive advice concerning the issues raised in the complaint or send the justice of the peace a letter of advice concerning the issues raised in the complaint, or both;

c) order that a formal hearing into the complaint be held by a hearing panel; or,

d) refer the complaint to the Chief Justice of the Ontario Court of Justice.

The complaints committee reports to the Review Council on its decision and, except where it orders a formal hearing, does not identify the complainant or the justice of the peace who is the subject of the complaint in its report.

Notification of Disposition

After the complaints process is completed, the Review Council communicates its decision to the person who made the complaint and, in most cases, to the justice of the peace. A justice of the peace may waive notice of the complaint if it is being dismissed and no response was invited by the Council. In accordance with the Procedures of the Review Council, if the Review Council decides to dismiss the complaint, it will provide brief reasons.

Public Hearing Under section 11.1

When the complaints committee orders a public hearing, under section 11.1(1) of the *Act*, the Chief Justice of the Ontario Court of Justice, who is also the Chair of the Review Council, establishes a three-member hearing panel from among the members of the Council, composed of: a provincially appointed judge who chairs the panel; a justice of the peace; and, a member who is a judge, a lawyer or a member of the public. Complaints committee members who participated in the investigation of the complaint do not participate in its review by a hearing panel.

The legislation provides for judicial members to be appointed as temporary members of the Council to ensure that the three members of the hearing panel have not been involved in earlier stages of reviewing the complaint. The Chief Justice of the Ontario Court of Justice may appoint a judge or a justice of the peace who is not a member of the Review Council to be a temporary member of a hearing panel where necessary to form each quorum to meet the requirements of the *Act*.

By the end of the investigation and hearing process, all decisions regarding complaints made to the Justices of the Peace Council will have been considered and reviewed by a total of six members of Council – three members of the complaints committee and three members of the hearing panel.

The Review Council engages legal counsel, called Presenting Counsel, for the purposes of preparing and presenting the case about the justice of the peace. The legal counsel engaged by the Review Council operates independently of the Review Council. The duty of legal counsel engaged to act as Presenting Counsel is not to seek a particular order against a justice of the peace, but to see that the complaint about the justice of the peace is evaluated fairly and dispassionately to the end of achieving a just result.

The justice of the peace has the right to be represented by counsel, or to act on his or her own behalf in any hearing under this procedure.

The *Statutory Powers Procedure Act*, with some exceptions, applies to hearings into complaints. The panel, on application at any time by Presenting Counsel or by the justice of the peace, may require any person, including a party, by summons, to give evidence on oath or affirmation at the hearing and to produce in evidence at the hearing any documents or things specified by the panel which are relevant to the subject matter of the hearing and admissible at the hearing.

Public Hearing Unless Ordered Private

A section 11.1 hearing into a complaint is public unless the Review Council determines, in accordance with criteria established under the *Statutory Powers Procedure Act*, that matters involving public security may be disclosed; or, intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure of such matters, in the interests of any person affected or in the public interest, outweighs the desirability of following the principle that the hearing be open to the public.

In certain circumstances where a complaint involves allegations of sexual misconduct or sexual harassment, the Council also has the power to prohibit publication of information that would disclose the identity of a complainant or a witness who testifies to having been the victim of the conduct. If a complaint involves allegations of sexual misconduct or sexual harassment, the hearing panel will, at the request of the complainant or of a witness who testifies to having been the victim of such conduct by the justice of the peace, prohibit the publication of information that might identify the complainant or the witness, as the case may be.

Dispositions after section 11.1 Hearing

After hearing the evidence, under section 11.1(10) of the *Justices of the Peace Act*, the hearing panel of the Council may dismiss the complaint, with or without a finding that it is unfounded or, if it upholds the complaint, it may decide upon any one of the following sanctions singly or in combination:

- warn the justice of the peace;
- reprimand the justice of the peace;
- order the justice of the peace to apologize to the complainant or to any other person;
- order the justice of the peace to take specified measures such as receiving education or treatment, as a condition of continuing to sit as a justice of the peace;

- suspend the justice of the peace with pay, for any period; or,
- suspend the justice of the peace without pay, but with benefits, for a period up to thirty days.

Removal from Office

Following the hearing, the Review Council may make a recommendation to the Attorney General that the justice of the peace be removed from office. This sanction stands alone and cannot be combined with any other sanction. A justice of the peace may be removed from office only if a hearing panel of the Review Council, after a hearing under section 11.1, recommends to the Attorney General under section 11.2 that the justice of the peace be removed on the ground of:

- he or she has become incapacitated or disabled from the execution of his or her office by reason of inability to perform the essential duties of the office because of a disability and, in the circumstances, accommodation of his or her needs would not remedy the inability, or could not be made because it would impose undue hardship to meet those needs;
- conduct that is incompatible with the execution of the office; or
- failure to perform the duties of his or her office.

Only the Lieutenant Governor in Council may act upon the recommendation and remove the justice of the peace from office.

Recommendation of Compensation for Legal Costs

When the Justices of the Peace Review Council has dealt with a complaint, section 11(16) of the *Justices of the Peace Act* makes provision for a justice of the peace to request that a complaints committee recommend to the Attorney General that he or she should be compensated for all or part of the costs of legal services incurred in connection with the investigation. Such a request would generally be submitted to the Council after the complaints process has been completed, along with a copy of the statement of account of legal services to support the request. Similarly, section 11.1(17) allows a hearing panel to recommend compensation for all or part of the cost of legal services incurred in connection with a hearing.

In 2011, five recommendations for compensation were made by a complaints committee or hearing panel to the Attorney General that the justice of the peace be compensated for all or part of the cost of legal services incurred in connection with the investigation or hearing of the complaints.

Legislation

The current legislative provisions of the *Justices of the Peace Act* concerning the Justices of the Peace Review Council are available on the government's e-laws website at www.e-laws.gov.on.ca. The website contains a database of Ontario's current and historical statutes and regulations.

11. SUMMARY OF COMPLAINTS CLOSED IN 2011

Overview

The Justices of the Peace Review Council carried forward 37 complaints to 2011 from previous years. During 2011, 52 new complaint files were opened with the Review Council. Including cases carried into 2011 from previous years, the total number of files open during 2011 was 89. Of the 89 open files in 2011, 33 files were completed and closed before December 31, 2011.

Of the 33 files that were closed, seven were opened in 2011. Twenty-four were from 2010 and two were from 2009.

Fifty-six complaints were still ongoing at the end of 2011 and were carried over into 2012. Of the 56 files carried over into 2012, 45 were from 2011, ten were from 2010 and one was from 2009. The one file from 2009 was a lengthy complex matter that was ordered to a hearing that is reported on in the appendices of this Annual Report.

Dispositions

As indicated earlier, section 11(15) of the *Justices of the Peace Act* authorizes a complaints committee to:

- dismiss the complaint if it was frivolous, an abuse of process or outside the jurisdiction of the complaints committee;
- invite the justice of the peace to attend before the complaints committee to receive advice concerning the issues raised in the complaint or send the justice of the peace a letter of advice concerning the issues raised in the complaint, or both;
- order that a formal hearing into the complaint be held by a hearing panel; or,
- refer the complaint to the Chief Justice of the Ontario Court of Justice.

Of the 33 files addressed and closed, eight complaints were dismissed by the Review Council under section 11(15)(a) on the basis that they were found to be outside of the jurisdiction of the Council. These files typically involved a complainant who expressed dissatisfaction with the result of a trial or with a justice of the peace's decision, but who made no allegation of misconduct. While the decisions made by the justice of the peace in these cases could be the subject of other legal remedies, such as an appeal, the absence of any alleged misconduct meant that the complaints were outside of the jurisdiction of the Review Council.

In three cases that were closed, the Council lost jurisdiction over the complaint. This occurs when a justice of the peace retires, resigns or dies and no longer holds the office of justice of the peace.

Complaints within the jurisdiction of the Council included allegations such as improper behaviour (rudeness, belligerence, etc.), lack of impartiality, conflict of interest or some other form of bias.

Fifteen complaint files were dismissed by the Review Council under section 11(15)(a) after they were investigated by a complaints committee and determined to be unsubstantiated or unfounded or the behaviour did not amount to the level of misconduct.

In five cases, the Review Council provided advice to justices of the peace under section 11(15)(b) of the *Act*. In four of those cases, the justice of the peace was sent a letter of advice concerning issues raised in the complaints, and in one case the justice of the peace attended before the complaints committee to receive advice in person concerning the issues raised in the complaints.

One complaint was referred to the Chief Justice of the Ontario Court of Justice pursuant to section 11(15)(d) of the *Act* during 2011. A complaints committee will refer a complaint to the Chief Justice of the Ontario Court of Justice in circumstances where the committee is of the opinion that the conduct complained of does not warrant another disposition and that there is some merit to the complaint. As well, the committee is of the view that a referral to the Chief Justice is a suitable means of informing the justice of the peace that his or her course of conduct was not appropriate in the circumstances that led to the complaint. The committee may recommend imposing conditions on its referral to the Chief Justice where the committee agrees that there is some course of action or remedial training of which the justice of the peace could take advantage and the justice of the peace agrees.

Following the meeting with the justice of the peace, the Chief Justice provided a written report to the committee. After reviewing the Chief Justice's report, the committee noted that the matter had been appropriately addressed and the file was closed.

Two public hearings were held in 2011. Decisions made in those cases are included in the appendices of this Annual Report. A public hearing will be ordered pursuant to section 11(15)(c) where the complaints committee is of the opinion that there has been an allegation of judicial

misconduct which the majority of the members of the committee believes has a basis in fact and which, if believed by the finder of fact, could result in a finding of judicial misconduct. When a hearing is ongoing, updates on the status of the case are posted on the Review Council's website. At the end of a hearing, the decision can be found on the website under the link "Public Hearings Decisions" at www.ontariocourts.on.ca/jprc/en/hearings/.

Types of Cases

Of the 33 complaint files that were completed and closed under the current legislation, 13 arose from events during provincial offences proceedings, nine arose from matters in Intake Court, seven arose from proceedings under the *Criminal Code* (four from set-date court, three from peace bond applications) and four related to conduct outside of court.

Case Summaries

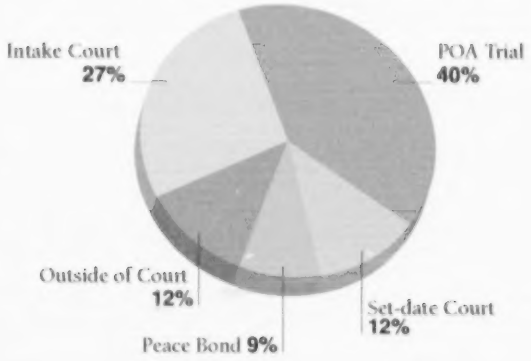
Case summaries for each complaint follow in Appendix A of this Report.

SUMMARY OF COMPLAINTS CLOSED IN 2011

DISPOSITIONS ON COMPLAINTS CLOSED IN 2011	
Dismissed as out of jurisdiction	8
Dismissed as not substantiated or did not amount to misconduct	15
Advice Letter	4
Advice – In-person	1
Referred to Chief Justice	1
Loss of Jurisdiction	3
Ordered to a Hearing	1
TOTAL CLOSED IN 2011	33

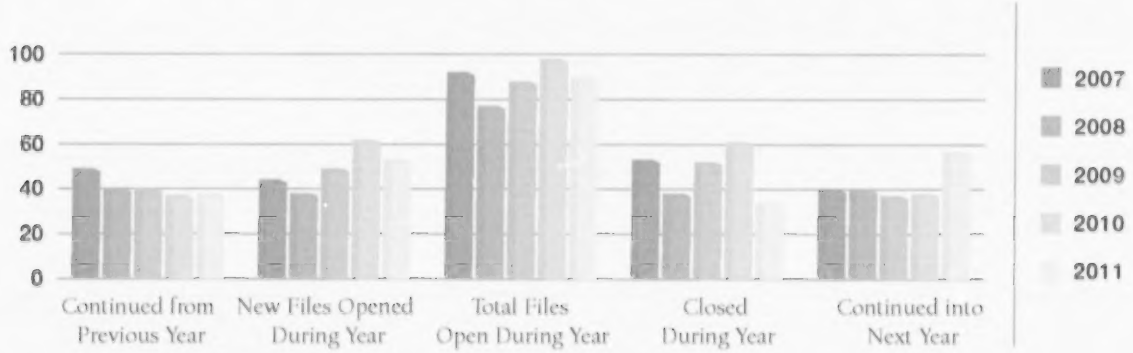
TYPES OF CASES CLOSED IN 2011

TYPES OF CASES	# OF COMPLAINTS
Provincial Offences Court	13
Intake Court	9
Bail Court	0
Set-date Court	4
Pre enquêtes	0
Peace Bond Applications	3
Out of Court Conduct	4
TOTAL	33



CASELOAD IN CALENDAR YEARS

	2007	2008	2009	2010	2011
Continued from Previous Year	48	39	39	36	37
New Files Opened During Year	43	37	48	61	52
Total Files Open During Year	91	76	87	97	89
Closed During Year	52	37	51	60	33
Continued into Next Year	39	39	36	37	56



APPENDIX A

2011 CASE SUMMARIES

APPENDIX A

Case Summaries

A

Complaint files are given a two-digit prefix indicating the complaint year, followed by a sequential file number and by two digits indicating the calendar year in which the file was opened (i.e., file no. 22-001/11 was the first file opened in the 22nd complaint year and was opened in calendar year 2011).

Except where a public hearing was ordered, details of each complaint for which the complaints process was completed, with identifying information removed as required by the legislation, are provided below. Decisions on public hearings are provided in other appendices in this Annual Report.

CASE NO. 20-020/09

The complainant, a lawyer, filed a complaint against the justice of the peace who presided over his client's trial. The complainant alleged that Her Worship's "tone from the outset when addressing me made it clear that my presence was irrelevant" and he described the trial environment as "bickering and squabbling in a courtroom of chaos" and a "free for all". The complainant indicated that Her Worship "stepped into the arena", interrupting his cross-examination in the absence of any objections or concerns from the Crown Attorney. The complainant further alleged that Her Worship failed to make rulings on objections and he was simply told "to have a seat". The complainant cited sections of the trial transcripts to support his concerns with Her Worship's conduct and comments, including a comment from Her Worship to the complainant stating, "I don't know where you went to law school but I'm beginning to wonder."

In summary, the complainant alleged that Her Worship's treatment of him was rude, unwarranted, abusive and adversarial and her comments as slanderous, actionable, gratuitous, denigrating and demeaning. The complainant stated, "I am seeking a complete unequivocal apology acceptable to me from the Justice of the Peace."

The complaint was assigned to an investigating complaints committee. The committee reviewed and considered the letters of complaint and materials submitted by the complainant. The committee also requested and reviewed the full transcripts and audio recordings of the trial proceedings and reviewed the transcripts of related judicial proceedings.

Following its review of the court record of the trial, the committee found that the audio recording showed that there was a hotly contested atmosphere during the proceeding. The committee found that the interactions, legal arguments and objections between the complainant and the Crown Attorney had created a tense adversarial environment from the outset of the proceedings.

Case Summaries

From its review of the transcripts, and in particular the audio recordings, the committee observed Her Worship's overall tone in the trial to be appropriate and judicial and noted that she took brief breaks and attempted to use humour to lighten the tension being created. While recognizing that the trial was very adversarial, the committee observed that the complainant, in the course of advocating for and defending his client, demonstrated conduct at times toward both the Crown Attorney and the Court that could be perceived as disrespectful and confrontational. In the view of the committee, the court record showed that Her Worship intervened as necessary and with sufficient force to maintain decorum and control over the proceedings. The committee found that the court record showed that Her Worship was generally patient and respectful of all parties, even when drawn into the fray of objections and arguments.

With respect to the complainant's allegations of mistreatment by Her Worship, the committee found that the court record failed to support his assertions that Her Worship's treatment of him was rude, unwarranted, abusive and adversarial. Similarly, the committee found no support for a conclusion that Her Worship's comments were slanderous or actionable, as alleged.

Although the committee found Her Worship's conduct during this difficult trial atmosphere to be judicial, the committee was concerned with the comment by Her Worship to the complainant that "I don't know where you went to law school but I am beginning to wonder". The committee found that the transcript and the audio recording confirmed that Her Worship made the comment. The committee was of the view that a justice of the peace must always strive to be patient, dignified and courteous to lawyers, litigants and others in performing the duties of judicial office. The committee invited a response from Her Worship with regard to this comment.

The committee received and reviewed a response from Her Worship. The committee noted that Her Worship had reflected upon her conduct during the trial. The committee was satisfied that Her Worship did not intend the comment about law school to be taken literally. Rather, it was clear that she did not doubt the complainant's legal education and had made the comment to try to inject levity into a difficult environment in the court room to try to defuse the situation. The response showed that Her Worship agreed that she should not have made the comment. She regretted that she appeared to become personal in her remarks and extended an apology to the complainant and to the Review Council for her remark.

The complaints process through the Review Council is remedial in nature and through the review of one's conduct, improvements are made as to how individuals are treated and situations handled in the future. In considering a disposition in this matter, the complaints committee was

of the view that providing Her Worship with advice in writing, pursuant to section 11(15)(b) of the *Justices of the Peace Act*, would assist her in fully appreciating the importance of refraining from making gratuitous comments that could be perceived as demeaning or insulting.

The committee advised Her Worship of its conclusion that the audio recording of the trial confirmed that it was a hotly contested event and that Her Worship was attempting to inject levity to defuse the situation. The committee reminded Her Worship that even in difficult circumstances, a justice of the peace has a duty to maintain a high standard of conduct and professionalism so as to preserve the integrity of the judicial office and the faith and trust of society in the persons who hold that judicial office. A justice of the peace must always strive to be patient, dignified and courteous to lawyers, litigants and others in performing the duties of judicial office. The committee encouraged Her Worship to learn from the experience during this trial and from her review of her conduct in this matter.

Having provided its advice to Her Worship in writing, the complaints committee closed the complaint file in this matter and thanked the complainant for bringing his concerns to the attention of the Council.

CASE NO. 20-028/09, 21-006/10 AND 21-046/10

The justice of the peace was the subject of three complaints arising from allegations about his activities with a company that sold services to members of the public.

CASE NO. 20-028/09

This complaint arose from a contractual disagreement between the complainant and the subject justice of the peace relating to His Worship's involvement with a company and an alleged breach of contract. The complainant also provided to the Review Council a number of e-mail communications with His Worship about the agreement. The emails included an e-mail which included an allegedly inappropriate photo.

The complainant also alleged that His Worship had failed to live up to the standards of conduct for justices of the peace, both in his business dealings with them and in sending the e-mail containing the inappropriate photo.

Before the complaints committee determined the appropriate disposition in relation to the complaint, the Review Council received two related complaints about the conduct of His Worship, and this complaint was held in abeyance pending the opportunity to investigate those related matters.

Case Summaries

CASE NO. 21-006/10

The complainant informed the Council that charges had been laid under a provincial statute in relation to activities of the company referenced in Case No. 20-028/09. The complainant raised allegations about His Worship's involvement in the company's activities and allegations about his handling of those charges.

Before the committee determined the appropriate disposition, the Review Council received a related complaint. This complaint was held in abeyance pending the opportunity to investigate the related complaint.

CASE NO. 21-046/10

The complainant raised further allegations about His Worship's involvement with the company referenced in Case No. 20-028/09. He also alleged that His Worship had used his title of justice of the peace on a letter related to company business.

Before a final determination was made on this complaint and the other two outstanding complaints, the committee received confirmation that His Worship was no longer a justice of the peace. As he was no longer a justice of the peace, the Justices of the Peace Review Council had no jurisdiction to continue its complaints process in relation to the conduct of His Worship. The Council administratively closed the three files due to a loss of jurisdiction.

The complainants and the former justice of the peace were informed that if he were to return to the office of justice of the peace in the future, the complaints process would recommence.

CASE NO. 21-001/10

The complainant alleged that the subject justice of the peace did not live up to the high standards of personal conduct and professionalism set out in s. 13(3) of the *Justices of the Peace Act* and in the *Principles of Judicial Office of Justices of the Peace*. The complainant identified himself as the husband of a woman who had met His Worship while they were on vacation. The complainant indicated that his wife returned from her vacation with her girlfriend and "spoke glowingly about His Worship". He indicated that his wife was proud to befriend "someone who has the capacity of a judge".

The complainant alleged that His Worship "seems to have other ideas beside friendship" and indicated that after the vacation, His Worship had communicated with the complainant's wife by e-mail and phone. He alleged that when the complainant's wife declined His Worship's

invitation to get together at his house, His Worship sent more emails, "pressing for the get together and adding very sexually explicit words". According to the complainant, His Worship made numerous phone calls to his wife's workplace and cell phone and "sent more emails of the same nature". In one such e-mail, His Worship "explicitly stated his sexual intention when he wrote, 'I will not accept anything else until I have you in the sack…". The e-mails and phone calls stopped after the husband became aware of the details of the emails and the complainant's wife asked His Worship to stop all forms of communication with her.

The complainant alleged that His Worship's "deliberate and repeated attempts to arrange for [the complainant's wife] to be 'in the sack' is a violation to her as a person". The complainant indicated that His Worship's "emails and phone calls [are] an attack on my family. My family trust and depend on the Administrator of Justice to defend our institution. As a result of his conduct, our fate and confidence in the system is shaken and shattered." The complainant expressed, "I can not rest until I know that I count on the Justices of the Peace to uphold its high standards of personal and professional conduct". The complainant attached some of the e-mail communications and indicated "there were numerous emails and, under proper supervision, I am prepared to submit them to Council for review".

After reviewing the complainant's letter and enclosed emails, the complaints committee retained the services of an independent external investigative counsel to conduct interviews of the complainant, his wife and his wife's friend who had accompanied her on vacation. Despite repeated attempts by the investigative counsel, the complainant's wife and her friend declined to be interviewed. A transcript of the interview of the complainant, along with additional e-mail correspondence between his wife and His Worship, were forwarded to the complaints committee for its review.

Based on the information available, the committee did not find support for the allegation that His Worship had held himself out to be a judicial officer who had the capacity of a judge. After careful consideration, the committee was concerned about the manner in which His Worship expressed himself in his e-mail correspondence with the complainant's wife. While the committee observed that the conduct complained of was in the form of communications that were intended to be private, the committee also noted that given the role of justices of the peace in the justice system, even the personal conduct of a justice of the peace can affect the level of confidence in the judicial officer and in the administration of justice generally. The committee requested a response from His Worship to the complainant's allegations.

After reviewing the response, the committee was satisfied that His Worship had genuinely reflected upon his conduct. He expressed deep regret for engaging in sexual banter and for sending sexually suggestive or explicit messages. He apologized for his conduct and explained

that it had appeared to him that the complainant's wife had consented to, and seemingly welcomed the on-going dialogue, finding His Worship to be supportive, confiding in him on a range of personal and family matters, and seeking business advice from him. The committee appreciated that His Worship expressed his apology to the complainant and his wife for his conduct and for the impact and stress that had been caused. He fully recognized the inappropriateness of his comments in the emails and of the invitations to the complainant's wife. His Worship provided his assurance that the e-mails were not a reflection of his attitude or his performance as a justice of the peace in or outside of the courtroom.

The committee appreciated His Worship's thorough response to the allegations and accepted the sincerity of his apology and his acknowledgements of the inappropriateness of his conduct and comments. The committee communicated to the complainant His Worship's apology to the complainant and his wife.

In considering the appropriate disposition, the committee noted that the conduct of justices of the peace both inside and outside of the court can impact public confidence in the judicial officer and in the administration of justice generally. The preamble to the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* that has been approved by the Justices of the Peace Review Council states:

> "The justices of the peace of the Ontario Court of Justice recognize their duty to establish, maintain, encourage and uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of their judicial office and to preserve the faith and trust that society places in the men and women who have agreed to accept the responsibilities of judicial office. All judicial officers are obligated to treat members of the public with courtesy and respect."

As well, the *Principles* address the responsibility of justices of the peace in the community:

> 3.1 Justices of the peace should maintain their personal conduct at a level which will ensure the public's trust and confidence.

After careful consideration, the committee decided to send a letter of advice to the justice of the peace pursuant to section 11(15)(b) of the *Justices of the Peace Act*. The complaints process through the Review Council is remedial in nature and through the review of and reflection upon one's conduct improvements are made as to how situations and individuals are treated and handled in the future.

The committee reminded His Worship that a justice of the peace must exercise care in his interactions with others, both professionally and personally. As well, the committee observed that in today's age of technology, as with any other action that a justice of the peace takes, a justice of

the peace's use of email and other electronic forms of communication and dialogue must be done carefully and in a manner consistent with the *Principles of Justice Office of Justices of the Peace*. Even in personal use of technology, a justice of the peace should maintain dignity in every comment, photograph, and other information shared in social communications through the internet.

The committee encouraged His Worship to exercise care in the future in his conduct, and to be mindful of the high standard of behaviour expected of justices of the peace, even outside of the courtroom.

After providing His Worship with advice in writing, the committee determined that no further steps were required and closed its file.

CASE NO. 21-010/10

The complainant indicated that he had attended at Intake Court for the purpose of having a restraining order issued. He provided the Review Council with details of his Intake Court appearance and alleged misconduct on the part of an unnamed female justice of the peace. The date and court location were confirmed with the complainant.

On the day in question, the complainant indicated that he was told by a clerk at the Intake Court office that he could only apply for a restraining order between 8:30 a.m. and 10:30 a.m., but since it was not busy, she would make an exception. The complainant alleged that the justice of the peace told him that he had made up the story about the clerk making an exception and the justice of the peace "began to act like a prepubescent runt with no manners". He further alleged that Her Worship became "combative" and disrespectful in her comments by suggesting he was being untruthful. He also alleged that when he told her that the conversation may be recorded, "she flew into a fit and said she would not identify herself and that she was going to have security remove me". The complainant alleged that Her Worship "behaved like a degenerate of the street, a lowlife of diminished character". He indicated that she owed him an apology and that she should undergo re-training.

The complaint was assigned to a three member complaints committee for review and investigation. The committee sought to identify the justice of the peace through Court Services on the basis of the information about the gender, date, time and location provided by the complainant. Court staff confirmed there was only one female justice of the peace assigned to Intake Court duties that day.

The committee requested a copy of the transcript and audio recording of the complainant's attendance in the Intake Court on the day in question. Court Services advised, after a thorough

search of the audio recording for the Intake Court, that no record of the complainant's attendance was found on the recording. As a result, no transcript was available. The investigating committee then requested a copy of the Intake Court sign-in sheet and Intake Court docket to confirm that the complainant had attended that day. Court staff confirmed that the Intake Court sign-in sheet was the record of appearances for all Intake Offices at that court location. In reviewing these records, the complaints committee noted that the complainant's name did not appear on the sign-in sheet or on the docket.

As part of its investigation, the committee requested information about the information and instructions given to individuals wishing to apply for a peace bond at the particular court location. It was confirmed that all applicants wishing to see a justice of the peace were required to sign in at the counter, either before or after completing the required forms. It was also confirmed that peace bond applications were only heard between 8:30 a.m. and 10:30 a.m. on certain days, but that special appointments could be made for individuals to re-attend on another day at an approved time. Court staff indicated that they did not grant exceptions for individuals attending outside of the prescribed time. Rather, appointments were at the discretion of the presiding justice of the peace. It was also confirmed that all applications were retained by the court if they were seen by a justice of the peace, regardless of whether or not it was advanced to a peace bond hearing.

Having found no confirmation that the complainant had attended before the female justice of the peace who presided on the date in question, the committee asked the court staff whether there was a copy of any peace bond application filed by the complainant against the accused named in his letter. This was an attempt to ascertain whether the complainant had indeed filed an application and to determine when he was seen by a justice of the peace in relation to the matter. Court Services advised they had no record of any peace bond application filed by the complainant.

In response to the complainant's assertion that the female justice of the peace called Court Security in relation to his Intake Court appearance, the complaints committee sought a response from Court Security as to any incident report in relation to the complainant for the day in question. The information received from Court Security did not support the version of events provided by the complainant. Police staff advised that on the particular day, Court Security were called to attend in relation to the complainant's attendance at a Small Claims Court earlier in the day in the same courthouse. Security was also asked to attend at a business office in the same courthouse on that date in relation to his attendance. However, it was confirmed that there was no incident report relating to the complainant in relation to his alleged attendance in Intake Court.

Based on the information available, the committee found there was no support to corroborate the allegations of the complainant and no evidence to support a finding that he had interacted with the female justice of the peace on duty on the date in question. On the contrary, there was credible and reliable information from Court Security which directly contradicted the allegations. As such, the committee dismissed the complaint as without basis and closed its file.

CASE NO. 21-013/10

The complainant alleged that he attended at Intake Court and the justice of the peace would not serve him. The complainant advised that he told His Worship that he had evidence and photos. He alleged that His Worship asked him to come back later in the day and he returned with his evidence and His Worship let him wait a further 1.5 hours to see him. In the end, the complainant indicated that His Worship refused to lays charges. While waiting, the complainant indicated that he had a police officer review his evidence. He stated that the officer couldn't understand why the justices of the peace wouldn't lay the charges.

The investigating complaints committee requested a copy of the transcript of the Intake Court appearance. However, Court Services confirmed after a thorough search of the audio recording, that there was no recording of the complainant's attendance before His Worship that day. The committee obtained and reviewed a copy of the Intake Court sign-in sheet. The sheet showed that on the particular morning, the complainant signed in to see a justice of the peace. The committee also noted that there was a notation beside his name indicating that he was to return after lunch. The committee observed that there was no further sign-in or notation to indicate whether the complainant had re-attended. Additionally, the committee noted that all other matters on the Intake Court sign-in sheet, except that matter, were initialed by the justice of the peace. The committee was of the understanding that His Worship's initials signified that he had seen and dealt with those individuals. As there was no confirmation that the complainant had been seen by His Worship that day, the committee wrote to him to see if he had any further information that would assist them in reviewing the concerns that he had raised.

In his letter of response, the complainant confirmed that he had not been seen by His Worship in Intake Court. He explained in his letter that he attended the courthouse and had a brief conversation with His Worship, indicating to him that he had information, pictures and documents. He indicated that His Worship told him to return at 1 p.m., after the lunch break. He stated that he re-attended, signed in and continued to wait to be seen by His Worship. He said that he opened the door to the office, at which time His Worship had looked up and saw the complainant but refused to acknowledge him. He indicated that he returned to the waiting area and that after waiting another hour with no- one coming to talk to him, he got discouraged

and left. He stated that not knowing what to do, he showed his evidence to an undercover police officer who expressed his opinion that there was enough evidence to have the neighbour charged and that the justice of the peace should be working with him and laying the charges.

Following a review of the all of the information available, the committee concluded that there was insufficient evidence to support the allegation that His Worship refused to serve the complainant or deal with the matter. The committee noted that he had signed in before lunch, and was asked to return after lunch. There was no indication on the sign-in sheet that he had returned after lunch, despite his recollection that he signed in again. There was evidence on both the sign-in sheet and the audio recording that His Worship dealt with other matters after lunch. There was no evidence that His Worship dealt with the complainant's matter, as he did not appear on the record and His Worship did not initial the sign-in sheet. The complainant also confirmed in his last letter that he left before seeing His Worship.

Based on all of the information available to it, the committee found that there was no evidence to support the allegation that His Worship would not serve the complainant. The committee found there was insufficient basis to take further action and dismissed the complaint.

The complaints committee noted that if the complainant was unhappy with any decision by this or any other justice of the peace to not proceed with a private information, the proper way to proceed was through other legal remedies in the courts. The Justices of the Peace Review Council has no authority to review or change a decision by a justice of the peace. A lawyer is in the best position to provide advice on legal remedies or options.

CASE NO. 21-020/10

The complainant appeared before the justice of the peace for a trial on a provincial offence. The complainant alleged that the justice of the peace was a "completely crooked and corrupt justice of the peace" who had no regard or respect for the fundamental principles of jurisprudence that require a justice of the peace to be just, fair, independent and impartial. He alleged that His Worship conducted himself like a Head Prosecutor and was arrogant, rude and interruptive, condescending and insulting.

The complainant had two motions before the court. According to the complainant, the prosecutor took the position that the motions should be heard after the trial, and His Worship agreed without consulting with the defendant. The complainant alleged that His Worship made snide and contemptuous remarks to him, and that he had a contemptuous and prejudiced scowl on his face.

The complainant also alleged that during the trial, His Worship:

- Violated his right to a fair hearing under the *Charter of Rights;*
- Violated his right to make a full answer and defence;
- Violated his right to conduct cross-examination;
- Was prejudiced against him as the defendant;
- Violated the *Evidence Act;*
- Interjected to answer for the prosecutor and the police office;
- Interrupted the complainant's cross-examination of the officer in a manner so egregious that he discombobulated his train of thought and he couldn't concentrate on his line of questioning;
- Demanded that the complainant reveal his line of questioning and line of defence before allowing questions of the officer;
- Improperly defended the officer during cross-examination and answered questions on behalf of a witness;
- Would not allow the complainant to introduce his exculpatory evidence;
- Demonstrated clear bias against the complainant and favoured the police and prosecutor; and,
- "Very simply, [this justice of the peace] was doing everything possible to corrupt my defence in order to orchestrate my conviction."

The complainant alleged that His Worship "runs a kangaroo court aimed at doing everything to convict the Defendant". The complainant perceived that His Worship detested him. He expressed the view that the justice of the peace must be Liberal member or supporter. He suggested that the Council should investigate His Worship's political connection as it appears the government has appointed him as a "tax collector". He also alleged that His Worship rebuked him for arriving late, but did not do the same when the police officer was over a half-hour late. He also stated that His Worship was fully ignorant of the *Provincial Offences Act.*

The complaints committee reviewed the transcript and the audio recording. The committee also invited a response from His Worship to the allegations. No response was received.

Following its investigation and careful review of all of the materials, including the audio recording of the proceedings, the committee noted that a number of the allegations made by

the complainant related to errors in law and procedure, rather than matters of conduct. The committee found that allegations related to a *Charter* violation, errors in the interpretation or application of the *Evidence Act*, and decisions that His Worship made in assessing the evidence or determining the issues were not matters within the jurisdiction of the Council. The committee concluded that the proper way for the complainant to proceed if he was unhappy with those decisions was through other legal remedies through the courts.

The committee did not find support for an allegation that His Worship was a crooked and corrupt tax collector.

After reviewing the transcript and the audio recording, the committee could understand why the complainant was left with the negative perceptions that he did not receive a fair hearing, that His Worship conducted himself like a prosecutor, and that the complainant was not given the opportunity to conduct a cross-examination. The committee found that the court record confirmed the allegations that His Worship was interruptive during the trial, that he intervened to ask questions as if he were the prosecutor, that he appeared to be making statements as if he could give evidence, and that he answered questions that were directed at the police. As well, the court record showed that he became increasingly impatient, frustrated and rude towards the complainant

The complaints committee observed that the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* state that justices of the peace must strive to be patient, dignified and courteous in performing their duties of judicial office and shall carry out their role with integrity, appropriate firmness and honour. The principle reflects the justice of the peace's unique role as exemplar and guardian of dignity of the court. A justice of the peace is expected to demonstrate proper decorum and courtesy to all parties in the courtroom, including self-represented litigants.

The committee also observed the importance, as expressed in the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice*, of a justice of the peace being impartial and objective in the discharge of his duties. Because a justice of the peace's courtroom conduct symbolizes the law in action, a justice of the peace compromises the notion that the law is impartial and uniform in its application if he is seen to manifest favour or bias toward a party, including a police officer. Because of the pivotal role a justice of the peace plays in preserving the rule of law, his or her conduct must foster respect for him, for his decisions, and for the judiciary at large.

The committee noted that a justice of the peace has a responsibility to assist self-represented defendants. Those individuals who are unfamiliar with the court process need to understand what is happening in the court and need to understand the reasoning behind the decisions of

the court. In the administration of justice, it is important not only that justice is done but also that justice is seen to be done.

With respect to the high standard of conduct to which judicial officials are held, the complaints committee referenced the preamble to the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice*, which states:

> "The justices of the peace of the Ontario Court of Justice recognize their duty to establish, maintain, encourage and uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of their judicial office and to preserve the faith and trust that society places in the men and women who have agreed to accept the responsibilities of judicial office."

It appeared to the complaints committee of the Review Council that His Worship's conduct fell below the standard of conduct expected of justices of the peace in the courtroom, and in their interactions with members of the public. Further, without a response from him, the Council was not able to determine whether he had an appreciation that his conduct was lacking.

Pursuant to section 11(15)(d) of the *Justices of the Peace Act*, the complaints committee referred the matter for a meeting with the Chief Justice of the Ontario Court of Justice with the objective of ensuring that His Worship had a solid understanding of the standard of conduct applicable to justices of the peace and the shortcomings with respect to his conduct during the proceeding.

Following her meeting with His Worship, the Chief Justice provided a report to the complaints committee. She confirmed that she had reviewed with His Worship the conduct that gave rise to the complaint. She noted that His Worship had agreed that during the court proceeding, his conduct fell below the standard required of justices of the peace in their interactions with litigants in the courts. He expressed regret for being impatient, argumentative, and dismissive with the self-represented complainant who submitted this complaint. At the time of the court matter that gave rise to the complaint, His Worship had been suffering from a medical condition. His Worship apologized for his conduct and confirmed that he was aware that he has a responsibility to carry out his duties as a justice of the peace in a manner that upholds the high standards of the Ontario Court of Justice.

The complaints process through the Review Council is remedial in nature and through the review of and reflection upon one's conduct improvements are made as to how situations and individuals are treated and handled in the future. After receiving the report from the Chief Justice, the complaints committee closed the file.

Case Summaries

CASE NO. 21-032/10

The complainant advised that he attended before a justice of the peace for the purpose of having charges of assault causing bodily harm and criminal harassment brought against his neighbour. According to the complainant, Her Worship and the prosecutor decided not to lay the charges but Her Worship allegedly told the complainant that, "If I wish, I should come back after her holidays". The complainant questioned whether the colour of his skin may have influenced the outcome of his matter. The complainant was asked to provide further particulars regarding his allegations but only provided court documents.

The complaints committee reviewed the complaint letter and documents provided. The committee also requested the transcript of his *pre-enquête* appearance before Her Worship.

Court Services provided the court record for appearances on two consecutive days. The record of the first appearance date showed that there was an attempt by the complainant to play an audio recording of the alleged incident to the prosecutor and to the court. The record also reflected that the complainant was unable to locate the specific audio track and at the suggestion of the prosecutor, the matter was put over to the following day. The record of the second appearance showed that the audio recording had been located and was played and questions were asked to clarify the events of the incident. During this appearance, the complainant was provided an opportunity to explain his conflict with his neighbor and the events that gave rise to his request that charges be laid.

After hearing from the complainant, Her Worship suggested that the complainant's matter should wait until the conclusion of the investigation by the community housing authority, as one possible remedy could see the accused moved out of the building. The record confirmed that Her Worship gave the complainant the option of waiting for the outcome of the housing authority investigation or proceeding that day to have a determination as to whether charges would be laid. In doing so, Her Worship mentioned she would be away on vacation and that he would have to re-attend after she came back, as she had heard evidence and was seized of the matter.

The complainant responded by describing his hardships about riding his bicycle from his apartment down to the court and commented, "I ain't looking at as racism, not yet", which the court interpreted as him suggesting that the court was being racist. After some discussion and clarification, the complainant was asked again if he wanted a decision that day or to wait for the result of the housing authority investigation. The complainant chose to have the matter decided that day rather than waiting. The record reflected that the determination was that no process would be issued. Her Worship explained to the complainant that after

receiving the investigation results from the housing authority, it was open to him to bring the matter back to the court to start the process again based on new information.

After careful review of the record and Her Worship's handling of the matter, the committee found that there was no evidence to support the complainant's allegation that Her Worship demonstrated racial bias or that the colour of his skin influenced the outcome of the matter. As well, the committee found that the transcript showed that Her Worship was fair in adjourning the matter a day for the complainant to find the audio recording of the incident. On the next date, she explained his options on how the matter could proceed. It appeared from the transcript that after process was not issued, Her Worship also made him aware of his right to return for another application in the future with the report from the housing authority as additional evidence, if he chose to do so. The complaints committee dismissed the complaint as unfounded and closed its file.

CASE NO. 21-033/10

The complainant attended before the justice of the peace in relation to tickets received while riding his bike. When asked by the Council for further details of his allegations, the complainant provided information that revealed he was charged with Litter Highway and Fail to Stop at Red Light – both contrary to the *Highway Traffic Act*. According to the complainant, he had a history dating back a number of years with the police relating to "trump up tickets for riding my bicycle". He referenced a newspaper article in which he had accused the police of racial-profiling and racism. The complainant alleged that the justice of the peace thought that he was confrontational. He also alleged that His Worship was a "Plain Bias J.P.".

The complaints committee reviewed the complaint letter and documents provided, including the newspaper article. The committee also requested and reviewed the transcript of the complainant's trial appearance before His Worship.

After reviewing the court record, the committee was of the view that there was no evidence of misconduct by the justice of the peace in the conduct of the trial. The committee noted that the record confirmed that His Worship was patient and provided the complainant with full opportunity to participate in his trial and be heard. The committee also found that the court record did not support the allegation that His Worship demonstrated bias or prejudice towards the complainant.

The committee noted that if the complainant disagreed with how the justice of the peace weighed the evidence or with his decisions, the proper way to proceed was through his legal remedies in the courts. The Council has no jurisdiction over such matters.

For the above mentioned reasons, the complaints committee dismissed the complaint and closed its file.

The complainant was also informed that the Justices of the Peace Review Council has no jurisdiction to review the conduct of persons other than justices of the peace. The Office of the Independent Police Review Director oversees the investigation of public complaints against Ontario's police. The complainant had already contacted that office.

CASE NO. 21-035/10

This is a complaint in relation to the complainant's trial for a parking offence. According to the complainant, he "pleaded not guilty with explanation". He alleged that when he was giving evidence, he was interrupted by His Worship and asked to return to his seat. The complainant indicated that His Worship then told him he was "guilty" without providing any explanation as to why and how he arrived at this decision. The complainant alleged that His Worship declined to look at his evidence and the articles that he had brought. He indicated that he was told by His Worship to pay a fine of $60 and that he was provided with no explanation for His Worship's ruling.

The complainant alleged that His Worship appeared hostile towards him and he felt, as an immigrant, that he was a victim of prejudice and bias at the hands of His Worship. The complainant stated that he was not complaining about the decision, but rather with how he was treated and how his case was handled. He also indicated that this may be "senile judge behaviour". He was the view that His Worship violated the *Principles of Judicial Office of Justices of the Peace* which state that justices of the peace should: be impartial and objective; approach their duties in a spirit of collegiality, cooperation and mutual assistance; have regard at all times to the rights of the parties before them; deliver reasons for judgment in a timely manner; maintain their conduct in a manner that will ensure the public's trust and confidence; and, not abuse their power.

After reviewing the complainant's letter, the complaints committee ordered and reviewed the transcript of the court proceeding and listened to the audio recording. Following its review of the court record, the complaints committee found no evidence to support the complainant's allegation of bias or prejudice due to ethnicity or otherwise. Nor did the committee find support for the complainant's allegation that there was an issue of "senile judge behaviour".

However, the committee found that the court record showed that His Worship had displayed a lack of patience with the complainant and that he had not assisted a self-represented defendant. The committee noted that the record reflected that His Worship interrupted and

discontinued the complainant's evidence-in-chief, resulting in an abridged opportunity for the complainant to explain his side of the story. The committee could reasonably understand how the complainant was left with negative perceptions of His Worship's conduct and the overall handling of his trial.

The committee requested a response from His Worship to the complainant's allegations. Following its review of the response, the committee was concerned that His Worship did not appreciate how his conduct during this trial had been perceived by the complainant and perhaps others in the courtroom that day.

The committee was of the view that all justices of the peace have a duty to maintain and uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of judicial office and the faith and trust of society. While the committee appreciated the demands of a busy courtroom upon a justice of the peace, it was the view that regardless of how busy a court is, there is an obligation on every justice of the peace to take the requisite time to listen to individuals before him or her and to explain what is happening, so that they can properly understand the process and the decision of the justice of the peace. As well, all judicial officers have a responsibility to treat members of the public with courtesy and respect.

The complaints process through the Review Council is remedial in nature and through the review of one's conduct, improvements are made as to how individuals are treated and situations handled in the future. In considering a disposition in this matter, the complaints committee was of the view that providing His Worship with advice in writing, pursuant to section 11(15)(b) of the *Justices of the Peace Act*, would assist him in fully understanding and appreciating the importance of the impressions and perceptions of justice in maintaining and building the public's respect and confidence in the justice system.

It was the committee's advice to His Worship that he reconsider his conduct in his dealings with the complainant that day with a view to improving his ability to conduct such matters professionally, patiently and by upholding the high standards expected of a justice of the peace. The committee encouraged His Worship to have a heightened sense of awareness of how his conduct may be viewed by others.

The committee reminded His Worship that a justice of the peace must never allow the length of the list and the shortage of time to result in a failure to allow for due process and to listen to a defendant. This is particularly important if an individual before them is not legal counsel. In the administration of justice, it is important not only that justice is done but also that justice is seen to be done.

As well, the committee reminded the justice of the peace of his responsibility to assist self-represented defendants. Those individuals who are unfamiliar with the court process need to understand what is happening in the court and need to understand the reasoning behind the decisions of the court.

Having provided its advice to His Worship in writing, the complaints committee closed the complaint file in this matter and thanked the complainant for bringing his concerns to the attention of the Council.

CASE NO. 21-037/10

The complainant appeared before the justice of the peace in set-date court. According to the complainant, he tried to make a *Charter* application and His Worship "proceeded to rule on the *Charter* application without allowing me to make submissions, present case law or be afforded the opportunity to call evidence". It was alleged that His Worship "summarily rejected my request to be heard" and only agreed to adjourn the matter after the prosecutor advised that the witness was not present because it was not a trial date. The complainant alleged that the actions of His Worship were "manifestly vexatious".

Further, he alleged that His Worship "compounded his impartiality and unfairness by citing the case of *R. v. Hoffman* and failing to provide either the prosecution or defence with a copy of the case." The complainant also asserted that the judge misapprehended the case. In the words of the complainant, "His Worship impaired my ability to speak and make submissions which ostensibly demonstrated inappropriate demeanour and a lack of civility. Indeed, it is trite to say that His Worship exceeded his jurisdiction in every material way during these proceedings." In view of the complainant, His Worship's "conduct was contrary to the impartiality, integrity and independence of the judiciary that it has undermined the public's confidence in the ability of this Justice of the Peace to perform the duties of his office or in the administration of justice generally." According to the complainant, "the prosecutor conceded that the actions of the His Worship were so flagrant and egregious as to bring the administration into disrepute that the charge was solely withdrawn on that basis".

The investigating complaints committee noted that if the complainant disagreed with how His Worship interpreted the law or with his decision to dismiss the *Charter* application, the proper way to proceed was through other legal remedies. Such matters were outside of the jurisdiction of the Review Council.

With respect to the other allegations, the complaints committee ordered and reviewed the transcript and the audio recording of the proceeding. After reviewing the court record, the committee had concerns with the conduct of the justice of the peace. The committee found

that the court record showed that he did not permit the complainant to make submissions on the *Charter* issues and that he cut him off when he tried to make submissions. Then, when the complainant expressed the concern that he did not get a chance to make all of his submissions, His Worship suggested that he was being vexatious. Further, when the complainant observed that he didn't have a chance to refer to case law, His Worship indicated that there was no case law other than *R. v. Hoffman* and again suggested that he was being vexatious. As well, when the complainant stated in the courtroom that he was going to bring an application of *certiorari* to quash the justice of the peace's order, His Worship told him that he should not mention it in the courtroom and that it was rude to say it.

The committee received and reviewed a response from the justice of the peace. The committee appreciated that in his response, the justice of the peace showed some acknowledgement that he had dealt with the complainant in an inappropriate way and that he had made rulings that were abrupt. His Worship expressed his regret for his actions and an apology for his conduct.

However, after reviewing the response, it appeared to the committee that His Worship may not have fully realized the impact of his conduct on others, and how it undermined the complainant's confidence in his ability to remain impartial and fair, leaving him with the impression that his right to be heard was not upheld. The committee remained concerned that as a result he, and perhaps others who were in the courtroom that day, had a loss of confidence in the ability of the justice of the peace to carry out his duties and in the administration of justice generally.

The committee observed that the preamble to the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* that has been approved by the Justices of the Peace Review Council states:

> "The justices of the peace of the Ontario Court of Justice recognize their duty to establish, maintain, encourage and uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of their judicial office and to preserve the faith and trust that society places in the men and women who have agreed to accept the responsibilities of judicial office. All judicial officers are obligated to treat members of the public with courtesy and respect."

The complaints committee noted that it is the responsibility of a justice of the peace to endeavour to maintain dignity and decorum in the courtroom. A justice of the peace must strive to be patient, dignified and courteous in performing the duties of judicial office. This requires exercising restraint over one's reactions and utterances, and conducting matters with the appropriate level of patience and fairness. As well, the committee noted that the complainant's comment that he intended to bring an application of *certiorari* was merely a statement that he intended to pursue his legal rights. The committee did not agree that his statement was rude or that it warranted a reprimand.

The complaints process through the Review Council is remedial in nature and through the review of and reflection upon one's conduct improvements are made as to how situations and individuals are treated and handled in the future. The complaints committee determined that the appropriate disposition was to provide the justice of the peace with written advice, pursuant to section 11(15)(b) of the *Justices of the Peace Act*, as its final disposition of the matter. The committee was of the view that a letter of advice was a suitable means of informing His Worship that his conduct during the complainant's appearance fell short of the high standards expected of judicial officers.

The committee reminded His Worship that there is an obligation on every justice of the peace to take the requisite time to maintain and uphold the high standards of conduct expected by the public that will preserve that faith and trust that society places in the men and women who have agreed to become justices of the peace. The committee encouraged His Worship to have a heightened sense of awareness of how his conduct is being viewed by others. In the administration of justice, it is important not only that justice is done but also that justice is seen to be done.

After providing its advice to His Worship, the complaints committee was satisfied that no further action was required and the file was closed.

CASE NO. 21-043/10

The complainant alleged professional misconduct and conspiracy on the part of two justices of the peace.

The complainant alleged that when he had attended at the courthouse to lay criminal charges, he was told by the clerk that the first justice of the peace who was there couldn't lay charges and was not on duty.

The complainant alleged that he then talked with the second justice of the peace, who was the subject of this complaint. The complainant alleged that the justice of the peace found that there was animosity against him by the accused against whom he wanted to lay charges, but then she refused to lay charges. He alleged that she asked him to go to the police first and then return two days later to lay charges.

He then alleged that when he returned to Intake Court two days later, Her Worship looked at him and had a "strange look". He also alleged that she said she would swear the information and told him to wait. He indicated that he waited from 3:00 p.m. until 3:45 p.m. and then Her Worship talked to him from the secretary's office window and told him, "I am very busy today.

I did not have lunch yet. Police must type your information, so come back next week." He alleged that when he told her that it could be typed in five minutes, she said that she could not commission the information now, he must come next week and another justice of the peace would do it. He alleged that when he told her that she had already heard his case and found animosity, she "rejected and stated she will not be available next week, then said next month."

The complainant alleged that Her Worship "deliberately made a false statement, abused office, and conspired with the first justice of the peace to steal my information for unlawful purposes [such as forwarding it privately to the accused], planned to harass and contempt me with [a court officer and police] as a revenge for my lawsuit against [the first justice of the peace]".

The complaints committee reviewed the complaint letter and a document from the complainant that was described as a Notice of Claim in which the complainant had typed out descriptions of his interactions with numerous parties including the Crown Attorney, the police, CSIS, OHIP, medical personnel and the first justice of the peace. With respect to the first justice of the peace, the committee noted that the complaint to the Review Council against that justice of the peace did not proceed after the complainant did not provide further information to the Review Council when asked to do so.

With respect to the complaint against the second justice of the peace, the committee requested the transcript and audio recording of the complainant's appearances before Her Worship on both appearance dates. Court Services advised that no audio recording was available for the second appearance date. Further, they advised that after reviewing the audio recordings for the first date, the complainant's matter did not appear on the record. As a result, the complaint committee requested the Intake Court sign-in sheets, Intake Court dockets for both dates and the audio recording for the first appearance date.

The committee noted that the sign-in sheet showed that on the first date, the complainant signed in at the Intake Court office just after 3:00 p.m. and that Her Worship initialed the sign-in sheet, which generally indicates that the person did appear before the justice of the peace. The Intake Court docket for Her Worship's court also showed the complainant on the list but with a notation that no process issued. A member of the complaints committee carefully reviewed the audio recording. No record of the complainant or his matter was found on the recording.

With respect to the second appearance date, the sign-in sheet reflected that the complainant had signed in just before 3:00 p.m. but the initials on the sheet indicated a different justice of the peace had dealt with him.

From the review of the matters that did appear on the audio recording for the first appearance date, the committee observed that Her Worship was consistently polite, cordial and professional in her dealings with the other matters before her that day. However, given the quality of the record and the incompleteness of the record on the first attendance date, and the lack of a record on the second date, the committee was of the view that it was necessary to invite a response from Her Worship in order to get a more comprehensive understanding of events.

In her response, Her Worship explained her interactions with the complainant on both of the specified dates. Her Worship indicated that on the first date, she had referred the complainant to the police for assistance in retrieving his property from the accused and that she had informed him that he could return to lay a criminal charge when he had the names of the individuals against whom he wished to lay charges.

Her Worship confirmed that it is her general practice to record everything in Intake Court and to restrict her interactions with members of the public to Intake Court. However, Her Worship acknowledged that on the second date when the complainant attended at the court, she did speak to the complainant at the counter, rather than in the Intake Court. The committee noted that it is always preferable for a justice of the peace to refrain from speaking to a party outside of the Intake Court, so that a court record can be available of any interactions with parties.

Her Worship explained that she felt that it would have been rude to ignore the complainant and wanted to explain the circumstances. She indicated that she spoke to the complainant to explain that it was an extremely busy day and she would not be available to see him that day. She did tell him that she had not yet been able to have lunch and that he should return the following week if he wished. She also explained to him that she was assigned to other duties during the remainder of the month and that he would need to appear before another justice of the peace.

Her Worship denied that she had provided the complainant with false information, or that she conspired with anybody to steal his information, or that she was involved in any plan to harass or "contempt" him. She confirmed that she was not aware of any lawsuits in which he might be involved. She also informed the Review Council that the complainant had posted allegations about her on the internet that had caused her to feel concern for her safety.

The committee noted that the complainant was provided access to justice in the Intake Court on both dates. The committee recognized that due to various circumstances, the workload in Intake Courts can be excessive at a given time for the number of justices of the peace who are assigned to those duties. In the particular case, the response from Her Worship explained that on the second date when the complainant went to the courthouse, a justice of the peace was ill and not able to preside in Intake Court. Another justice of the peace had to go to the Superior

Court of Justice, leaving the subject of the complaint as the only justice of the peace presiding in Intake Court on a busy day. The committee noted that on that second attendance date, when the complainant was informed he could not be dealt with that day, he was also advised that he could return before another justice of the peace. The committee found that the complainant was not precluded from pursuing his private information as a result of Her Worship not being able to preside over his matter.

The complaints committee noted that the complainant and the justice of the peace provided different versions of the events and without an audio recording, there was no independent record of the events. The committee was not able to make a determination with respect to the allegations.

The committee concluded that there was no evidence to support a finding of misconduct.

For the above mentioned reasons, the complaints committee dismissed the complaint and closed its file.

CASE NO. 21-047/10

The complainant was charged with "proceed contrary to sign at intersection" and filed a complaint about the justice of the peace who presided over his trial. The complainant alleged that His Worship made multiple mistakes during the trial and specifically alleged that His Worship:

- Erred in law by failing to provide his duty of assistance to him as an unrepresented complainant to have a fair trial;
- "Erred in law by determining the defendant does not have the right to receive services in French such as a bilingual sign since the defendant does not speak, read or write French";
- "Erred in failing to ask the prosecutor to prove the *French Language Services Act* does not apply to signs in Toronto, a designated bilingual area…";
- "Erred in failing to order the prosecutor to provide hard evidence to prove that the signs in this case comply with Section 45 of Regulation 615 under the *Highway Traffic Act*…".
- "Erred in emotionally being influenced by his own statement in the court that some of his family members died or was injured in traffic accidents in the past and trying to relate the alleged offence with recent traffic accidents in which pedestrians were killed or injured in the City …". "Those comments make the JP's decision very amateur, biased and unprofessional. This is also contrary to Principles of Judicial Office of Justices of the Peace of Ontario Court of Justice which say:

Case Summaries

1.1 Justices of the Peace must be impartial and objective in the discharge of their judicial duties."

- "Erred in law by setting a fine contrary to Schedule 43 updated on February 1, 2010 by Ontario Court of Justice on the alleged offence."

The complainant's view was that His Worship was either "incompetent and unprofessional for his job to make such unacceptable decisions or he knows the rules clearly but decided not to follow them and abused our legal system regardless". The complainant was seeking to have his "case reviewed and conviction revoked" and was seeking monetary compensation.

The Council sent a letter to the complainant to acknowledge receipt of his complaint, and informed him that the Council does not have the legislative authority to review his court case, a justice of the peace's application of the law, or a justice of the peace's decision in the case. The Council's jurisdiction extends only to the review of conduct of a justice of the peace. Additionally, the complainant was informed that the Council has no power to quash his conviction or to award compensation to him. The proper way to proceed if he sought such remedies was through the courts.

The complaint was assigned to an investigating complaints committee. The committee reviewed the complainant's letter and ordered and reviewed both the transcript and the audio recording of the complainant's trial before the justice of the peace. The committee also requested and reviewed a copy of the transcript of the complainant's appeal proceeding.

The complaints committee concluded that many of the concerns raised by the complainant, including the alleged errors in determining his rights arising from the *French Language Services Act*, were allegations of errors in law which were outside of the jurisdiction of the Council. Those issues were raised by the complainant as grounds in his appeal through the courts, which was the appropriate way to proceed.

With respect to the allegations that were matters of conduct, the committee reviewed the complaint, and the court record of the trial and appeal proceedings. The committee invited His Worship to respond to the allegations that he had failed in his duty to provide assistance to a self-represented defendant, and to the allegation that his comments, actions and/or attitude during the course of the trial gave rise to a perception that he acted in a manner contrary to the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice*.

His Worship provided a response in which he explained that there is always a tension, especially in busy Provincial Offences courts with lengthy case lists, between dealing with matters promptly and efficiently and the obligation of a justice of the peace to ensure that justice is not only done, but seen to be done. His Worship also described how he had offered some assistance to the complainant but was also conscious of the need for a justice of the peace to be an independent

arbiter. His Worship had asked the complainant whether he wished to ask questions of the police officer who was a witness and asked him whether he wished to testify, letting him know that he had the right to not testify. The complainant declined to question the officer or to give evidence. His Worship also noted that the complainant had attempted to give evidence during his submissions, and the prosecutor had objected. After reviewing the transcript, His Worship agreed that he could have been clearer in explaining to the complainant why it was his view that the complainant's proposed evidence did not have merit.

Following a review of his response, the committee was satisfied that His Worship had genuinely reflected on his conduct during the trial, that the complaints process had been a learning experience for him, and that he had become more vigilant in relation to the needs of self-represented defendants.

The complaints process through the Review Council is remedial in nature and through the review of and reflection upon one's conduct improvements are made as to how situations and individuals are treated and handled in the future. For the aforementioned reasons, the complaints committee dismissed the complaint as requiring no further action and closed its file.

CASE NO. 21-048/10

The complainant indicated that he and his witness attended for trial. The complainant advised that he had repeatedly requested full disclosure from the prosecutor in advance of the trial. He advised that he got his initial disclosure three days prior to the trial date by fax, but the disclosure was not complete and he viewed the officer's notes to be vague and lacking. On the trial date, the complainant stated to the Court his concerns about the disclosure, and argued that the late disclosure left him unable to make a full answer and defence to the speeding charge.

The complainant advised that he was expecting the justice of the peace to be guided by a high standard of conduct but "unfortunately, I feel that no such 'dignity' and 'fairness' emerged in this particular case, but rather the appearance of tension, division and bias and certainly the lack of exercise of common sense and proper judgment" on the part of presiding justice of the peace.

The complainant alleged that His Worship acted unfairly and with noticeable rudeness and injudicious temperament. The complainant expressed the view that His Worship refused to take his disclosure concerns seriously and failed to "provide sufficient guidance, in spite of the fact that I was at a disadvantage, as an unrepresented litigant". The complainant also alleged that a third party witness, a paralegal, was troubled by His Worship's conduct and the re-occurring errors in law. The complainant provided the paralegal's contact information in his letter of complaint.

In the end, the complainant's trial was adjourned, although he opposed the adjournment because of the added costs of attending and the inconvenience to him and to his witness. He concluded in his letter that he did not find the justice of the peace's conduct to be supportive of public respect and confidence in the administration of justice.

The complaint was assigned to an investigating complaints committee. The committee reviewed the extensive materials provided by the complainant and ordered and reviewed both the transcript and the audio recording of the complainant's attendance before the justice of the peace.

Additionally, the committee requested and reviewed the transcript of the complainant's appeal following his ultimate conviction by a different justice of the peace.

The committee noted that if the complainant disagreed with how His Worship considered his arguments about the adequacy of disclosure or with the decision that an adjournment should be granted, the proper way to proceed would be through legal remedies in court. Such matters are outside of the jurisdiction of the Justices of the Peace Review Council.

After careful review of the materials and the court record, the complaints committee considered all of the complainant's allegations and found no support for a finding of judicial misconduct.

For the aforementioned reasons, the complaints committee dismissed the complaint as unsupported and closed its file.

CASE NO. 21-049/10

The complainant had requested a trial for a speeding ticket he had received. He had attended court on a previous occasion to argue that late disclosure by the prosecutor had left him unable to make a full answer and defence to the charge. At that appearance he had requested that his charge be stayed however he was granted an adjournment by the presiding justice of the peace as a remedy for any late disclosure.

On the return date, the complainant appeared before the subject justice of the peace for trial. Following his arraignment, the complainant raised the issue that he was still awaiting missing disclosure. The history of disclosure was reviewed, the disclosure was deemed complete and the trial was ordered to proceed. In doing so His Worship offered a brief adjournment of a couple of weeks to allow the complainant further preparation time. The complainant opted to proceed with the trial. Nearing the conclusion of the cross-examination of the police officer by the complainant, His Worship advised that the matter would need to be adjourned due to lack of court time. The complainant was offered a continuation later the same day but declined due to a conflict with another appointment. The matter was put over four weeks for the continuation of the trial.

At the next court date, the issue of outstanding disclosure was raised again by the complainant. The complainant, feeling that he had exhausted all possible options to get the relevant outstanding disclosure, had decided to bring a *Charter* application. The subject justice of the peace granted an adjournment for an additional five weeks to allow for the complainant to prepare and file his *Charter* application. Having previously heard evidence, His Worship seized himself of the matter.

At the next court appearance, the complainant alleged that His Worship "took the position that I have not served formal notice upon the Attorney General of Ontario and the Attorney General of Canada", and as a result dismissed the *Charter* motion, "notwithstanding the direct and immediate serious consequences of his decision". His Worship directed that the trial continue. The complainant advised that he was unable to continue the cross-examination of the officer. In the end, the complainant advised that he was found guilty of the offence of speeding and fined $338, which was $104 more than the original set fine of $234.

Although the complainant filed an appeal of the decision, he filed a complaint against His Worship for his conduct during his trial. The complainant felt that he "could not bring out my defence with full force and effect". He felt that he did not have a proper opportunity to be heard and that he never had a chance of a fair trial. He felt that a substantial wrong and miscarriage of justice had resulted.

The complainant submitted that, "a reasonable person would conclude that the words and actions on the part of the justice of the peace had been discourteous and intimidating." The complainant alleged that His Worship "created an intimidating atmosphere" and "made intimidating remarks which in conjunction with a daunting physical demeanour and rather aggressive tone and taking a look at the case as a whole, would leave a reasonable person with a reasonable apprehension of bias and very disturbed".

The complainant alleged that His Worship argued with the complainant during his attempt to cross-examine the officer, and appeared to ignore or not to apprehend the relevance of the centrality of the complainant's right to challenge the credibility of the prosecution's witness. The complainant submitted that by placing restrictions on his cross-examination, His Worship precluded him from effectively putting forward his defence. According to the complainant, this set a negative tone that was indicative of bias.

The complainant also alleged that His Worship treated the complainant differently from how he treated the municipal prosecutor, which had an effect on the fairness of the trial. Aside from his allegations of bias and intimidation, the complainant alleged that His Worship had predetermined the case against him. The complainant requested that the Review Council review his concerns and remove His Worship from his position as a justice of the peace.

The complaint was assigned to an investigating complaints committee. The committee reviewed the complaint materials provided and ordered and reviewed both the transcripts and audio recordings of the complainant's three court attendances before the subject justice of the peace. Additionally, the committee requested and reviewed the transcript of the complainant's appeal following his conviction by the subject justice of the peace.

After a thorough review of the materials and the court record, the complaints committee considered all of the complainant's allegations and found no support for a finding of judicial misconduct on the part of His Worship. The committee noted that if the complainant disagreed with His Worship's decisions in the course of his trial, such as his decision to not hear the complainant's *Charter* application, the proper way to proceed would be through legal remedies in court, not a complaint to the Council. The Justices of the Peace Review Council has no authority to review the correctness of judicial decisions.

For the above reasons, the committee dismissed the complaint and closed its file.

CASE NO. 21-050/10

The complainant, who was charged under the *Compulsory Automobile Insurance Act*, filed a complaint against the justice of the peace who presided over his trial. According to the complainant, he was in custody at the time of his trial date. The complainant said that he had requested his defence materials, which were in the possession of the detention centre, to be brought with him to court, however, they were not provided to him. The complainant indicated that he expressed concerns to His Worship about not having his materials but alleged that His Worship said "it was not his concern". According to the complainant, His Worship proceeded with the trial in the matter in clear violation of his rights to a fair hearing and to make full answer and defence.

The complainant advised that he was self-represented and was unaware of his right to object. He suggested that His Worship's failure to observe his *Charter* rights "was driven by the same animosity, which was presented by the O.P.P. who laid the false criminal charges which had me in custody at the time". The complainant asked the Council to review the transcript and audio recording. He indicated that "this man is a menace and his representation of the Judicial System brings the system into clear disrepute".

The complaints committee reviewed the allegations and ordered and reviewed the transcript and audio recording of the complainant's trial before the subject justice of the peace. Following its review, the committee observed that His Worship's decision to proceed with the trial in the absence of the complainant's disclosure material and notes was a matter of judicial discretion

and subject to appeal. The committee found no evidence that His Worship acted with malice or a clear intention to deny the complainant's rights to a fair hearing or to make full answer and defence. Additionally, there was no evidence to support the complainant's allegation that His Worship's failure to observe his *Charter* rights "was driven by the same animosity which was presented by the O.P.P. who laid the false criminal charges" which had him in custody at the time. The committee concluded that His Worship's conduct and behaviour, within the context of the proceedings and the complainant's assertion, did not amount to judicial misconduct and did not bring the administration of justice into disrepute.

The committee noted that if the complainant disagreed with His Worship's decision or felt that his rights were violated, the proper way to proceed was through other legal remedies through the courts. The Justices of the Peace Review Council has no authority to review or change a decision by a justice of the peace.

For the aforementioned reasons, the complaints committee dismissed the complaint as unfounded and closed its file.

CASE NO. 21-051/10

The complainant indicated that he attended at the Intake Court to swear a private information. The complainant expressed his frustration with extended information hearing dates, information verification, information review and the process of swearing and formal re-typing. In addition, he indicated that Her Worship denied his request for a copy of the typed information he had just signed. The complainant alleged Her Worship refused to give him a copy of his signed and sworn information, "claiming she never gives a citizen a copy of the signed and sworn document". He stated in an attached letter that "refusal to given any public member a copy of a sworn document in regard to complaint information for charge on a selective basis is rift with possible areas of internal abuse and does not pass the smell test, and is unacceptable in the extreme."

The complainant also alleged that the process was a possible violation of the *Charter* and contrary to the *Courts of Justice Act* by having justices of the peace review informations both prior to and after swearing, then waiting weeks to go before judicial process, only to be told with no endorsement that the decision is "no process incomplete" without any form of reasons.

The complaints committee reviewed the allegations and was of the view that Her Worship's refusal to provide the complainant with a copy of the information was a matter of procedure and judicial discretion. Complaints about court processes and/or frustrations with the justice

system are not within the jurisdiction of the Council. If the complainant was unhappy with the decision of the justice of the peace, he could seek legal advice to determine what, if any, remedies may be available to him.

CASE NO. 21-052/10

The complainant indicated that he previously signed a private information and was scheduled before His Worship to determine whether or not process would be issued. The complainant alleged that His Worship ruled his information "incomplete" and "no process" even though the complainant had asked at the time of signing the information whether any further information was required. Additionally, the complainant alleged that His Worship failed to provide written reasons for his decision.

The complainant expressed his frustration with extended information hearing dates, information verification, information review and the process of swearing and formal re-typing. The complainant was of the view that "clearly, the room for systemic, professional and white collar criminal abuse within that branch of the administration of Justice is real and compelling". The complainant wrote to the Local Administrative Justice of the Peace to request that a full inquiry into the [Regional] Justice of the Peace Office be convened.

The complaints committee reviewed the complainant's allegations. It was the committee's opinion that the allegations constituted a disagreement with His Worship's decision to not issue process. The issue of whether His Worship was required to provide written reasons was a matter of law that could be pursued through other legal remedies, such as an appeal or judicial review. The committee also noted that the complainant's concerns about the private information process and his general frustrations in his dealings with the justice system are matters outside of the jurisdiction of the Council.

For the reasons above, the committee dismissed the complaint as being outside the Council's jurisdiction.

CASE NO. 21-053/10

The complainant, a lawyer, represented himself on a charge of speeding contrary the *Highway Traffic Act*. He filed a complaint against the justice of the peace who presided over the trial. The complainant had requested disclosure from a prosecutor's office prior to the trial but did not receive it. The complainant sought an adjournment on the basis that, because of non-

disclosure, he did not have the opportunity to make full answer and defence. The prosecutor confirmed receipt of his disclosure request, but opposed the adjournment on the basis that the request for disclosure was made to the wrong office only a few days before the trial. His Worship denied the adjournment and ordered that the trial must proceed. The prosecutor gave a verbal summary of the disclosure on the day of the trial by reading from the officer's notes. The complainant was convicted of speeding.

The complainant alleged that His Worship:

- "Contrary to the evidence, found as a fact that I did not make a disclosure request of the Crown";
- Commented that he was "shocked and amazed that a Barrister and Solicitor, in good standing, in the Province of Ontario would treat the matter in a cavalier fashion";
- Found that the complainant's request for an adjournment was "disingenuous" and accused him of "sharp practice" in open court; and,
- Stated that he viewed the complainant's request for an adjournment as an "embarrassment" and an "insult to the Court and to the profession of Barristers and Solicitors".

The complainant indicated that His Worship's comments "to me are slanderous" and "...the conduct of this JP crosses the line, and, in my view, the appearance is certainly that he uses his bench as a pulpit, not a courtroom, to grandstand, not dispense justice. My reputation was attacked as a lawyer when I was before the court as an accused. The conduct and comments of His Worship were swift, hostile, and said in a full courtroom before my colleagues, lawyers, paralegals, police officers and others."

The complainant provided the Council with a portion of the transcript of the trial. The complainant advised that following his conviction, he spoke with a paralegal, who was a former provincial prosecutor, in the body of the court. The complainant indicated that he received an e-mail later that day from the paralegal saying that he had seldom seen such behavior of a justice of the peace in court. As well, he said that His Worship had enquired of him, off the record, what they were talking about. A copy of the e-mail was provided with the complaint.

The complainant appealed his conviction, and the appeal was scheduled before a judge of the Ontario Court of Justice. According to the complainant, the judge, who later recused herself due to a conflict of interest, expressed concern about His Worship's tone. A portion of that appeal transcript was also enclosed with the complaint. The complainant advised that his appeal proceeded before another judge of the Ontario Court of Justice. The complaint included a copy of His Honour's decision which quashed the conviction and entered an acquittal of the charge.

The complainant also alleged that His Worship showed a "pattern of pugilistic behaviour against me and notably other minorities of Indian descent". He referenced a case in which His Worship was presented with a joint submission but he ignored the joint position on sentencing and sentenced the accused to jail.

The complaints committee reviewed the complainant's letter, the partial transcripts of the proceedings and the appeal decision. In addition, the complaints committee ordered and reviewed the full transcript of the complainant's trial and listened to the audio recording of it. The committee also obtained a copy of the appeal decision in the sentencing matter which the complainant had referenced in his letter.

The committee noted that the Council has no legislative jurisdiction to review the correctness of the decision by the justice of the peace to deny the request by the complainant for an adjournment. If a person believes that a decision by a justice of the peace is wrong, the proper way to proceed is through an appeal, and the complainant had taken that step.

The committee observed that the appeal judge found that in light of the comments made by the justice of the peace, the defendant would have had a reasonable apprehension of bias. As well, he found that a reasonable observer would have concluded that the justice of the peace was predisposed to decide the case against the defendant. The appeal judge concluded that the conviction should be quashed and he entered an acquittal.

The committee also reviewed the appeal decision in the other case presided over by the justice of the peace which the complainant had referenced.

Following its review of the court record and the materials collected, the complaints committee was concerned about His Worship's comments towards the complainant. Based on its review of the court record, the committee understood why the complainant was left feeling that he was treated unfairly and in an insulting manner by His Worship. The committee found that the court record showed that His Worship was condescending and used very insulting language toward the complainant. The allegation that His Worship had accused him of "sharp practice" was substantiated by the record. The transcript confirmed that he stated, "I find your request to have this matter adjourned disingenuous and smacking of, what has been referred to as, sharp practice." The committee noted that the term "sharp practice" is an extremely pejorative phrase used to describe behavior by lawyers that borders on being unethical. The committee observed that the use of the term in the circumstances was very inappropriate and should never have been said.

The court record also confirmed that His Worship had stated that he was shocked and amazed that a barrister and solicitor in good standing would treat the matters in such cavalier fashion. As

well, the record showed that he said that the request for an adjournment was an embarrassment and insult to the Court and to the profession of barristers and solicitors. The committee agreed with the conclusions of the appeal judge that His Worship's comments gave rise to a reasonable apprehension of bias and a perception that His Worship was predisposed to decide the case against the complainant.

The committee also noted the preamble to the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* that has been approved by the Justices of the Peace Review Council, which states:

> "The justices of the peace of the Ontario Court of Justice recognize their duty to establish, maintain, encourage and uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of their judicial office and to preserve the faith and trust that society places in the men and women who have agreed to accept the responsibilities of judicial office. All judicial officers are obligated to treat members of the public with courtesy and respect."

The committee invited a response from the justice of the peace to the complaint.

The committee received and reviewed the response from His Worship. The committee noted that his response demonstrated that His Worship had genuinely reflected on his conduct during the trial. As well, he had given careful attention to the impact of his comments on the complainant. He also fully acknowledged and accepted that he was judicially corrected on appeal.

The committee was satisfied that upon reflection, His Worship showed an appreciation that his words were unreserved, unbalanced and unnecessarily harsh. His Worship also appreciated that he should not have held the complainant to a different standard because he was a lawyer. The committee noted that His Worship deeply regretted the impression that he had left with the complainant and that the complainant felt that His Worship's errors were motivated by personal animosity toward him. His Worship expressed his apology to the complainant for his harsh remarks and for the impact that his mistakes had upon him.

With respect to the allegations of racial bias and pugilistic behaviour towards the complainant and other minorities of Indian descent, the committee concluded that the allegations were not substantiated. After reviewing the court record in the complainant's trial, the committee found no evidence of racial bias. As well, the committee observed that although the appeal judge found in the complainant's case that there was a reasonable apprehension of bias, there was no finding that race was a factor. The committee also noted that in one of the cases referred

to by the complainant, errors by His Worship were corrected on appeal; however, there were no findings by the appeal court of any racial bias towards the defendant in the case. The committee observed that in another case that was referenced by the complainant, it did not appear that racial bias was a basis for the litigation and the plaintiff's actions against a multitude of defendants were dismissed.

In considering the appropriate disposition, the committee concluded that although there was some merit to the complaint, the conduct did not rise to the level of misconduct that required further action. The complaints process through the Review Council is remedial in nature and through the review of and reflection upon one's conduct improvements can be made as to how situations and individuals are treated and handled in the future. After careful consideration, the committee was satisfied that the justice of the peace had genuinely learned from the experience, that he felt sincere regret for his actions and he had a greater appreciation of the high standards of conduct that are expected of justices of the peace.

The committee communicated His Worship's apology to the complainant. The complaint was dismissed pursuant to section 11(15)(a) of the *Justices of the Peace Act*.

CASE NO. 21-054/10

The complainant was convicted by the justice of the peace after a trial on charges under the *Highway Traffic Act* of failing to wear a seatbelt and of being a pedestrian on the roadway. He appeared again before the same justice of the peace a few months later and was convicted of failing to stop for a red light.

The complainant advised in his initial complaint letter that he had filed an appeal of the convictions resulting from the first trial and stated, in relation to that trial, "I believe you will be disgusted with this Judge's conduct when you study the transcript". The complainant indicated that on the second court date, the Crown Attorney was traversing cases to another court. The complainant asked that his trial be moved and alleged that His Worship said "no". The complainant indicated to His Worship that he felt he would not get a fair hearing from him, to which His Worship allegedly replied "too bad". The complainant advised that he left the court as, "I was not going to be subjected to his abuse again". He told the Council that he wanted to have another trial on the charge of failing to stop for a red light.

The complainant sent a second letter to the Council and enclosed the transcript of the first trial. In this letter, he raised matters of law related to his defence and asserted that the justice of the peace should have known the law. He also alleged that the officer lied in his testimony.

In a letter to the complainant, the Council clarified that its jurisdiction is limited to the review of allegations of conduct of justices of the peace in Ontario. He was informed that the Council has no legislative authority to review decisions of a justice of the peace.

The complaint was assigned to an investigating complaints committee. After review of the complainant's letter, the complaints committee ordered and reviewed the transcripts of both court proceedings and listened to the audio recordings. Following its review of the court record of both proceedings, the committee was concerned by the tone in which His Worship spoke and the manner in which he conducted himself and treated the complainant, a self-represented defendant. The committee found during the first court appearance that His Worship appeared to exhibit impatience. In sentencing, he proceeded to impose fines without hearing submissions. The committee also noted that at the end of the proceeding, the dialogue escalated to His Worship yelling at the complainant to "Leave the court!" before asking officers to remove him.

The committee observed that the complainant expressed on the record at his second appearance his loss of confidence in the ability of His Worship to be fair and impartial. Overall, following the committee's review of the record of the first proceeding, the committee could understand the negative perceptions left with the complainant following that appearance. With respect to the second appearance, the committee found that His Worship interrupted the complainant and did not allow him to make submissions on the issue of recusal. After reviewing the court record of both proceedings, the committee was sufficiently concerned by the manner in which His Worship conducted himself towards the complainant that a response was invited from His Worship.

Prior to submitting his response, His Worship listened to the audio recording of both court matters. The committee was concerned that His Worship's response appeared to focus on evidentiary and legal issues but failed to demonstrate an awareness of any concern about his conduct such as the volume and tone of his voice, or his interruptions of the complainant's questioning of the officer.

His Worship also referred in his response to the appeal of the complainant's first trial. Following the review of the appeal transcript, the committee provided His Worship with a copy of the appeal decision and a further opportunity to respond. In his second response, His Worship addressed the legal issues raised in the appeal but did not acknowledge any concerns with his conduct. After reviewing His Worship's second response to the complaint, the committee remained concerned that His Worship may not fully appreciate the negative perceptions created by his conduct towards the complainant.

The Review Council, and by extension, every complaints committee, has the role of maintaining and preserving the public's confidence in judicial officials and in the administration of justice through its review of complaints.

Case Summaries

In considering a disposition in this matter, the complaints committee focused on the manner in which His Worship conducted himself and how that conduct gave rise to the negative perceptions of the complainant and impacted on his confidence in His Worship specifically, and in the administration of justice, generally. The committee recognized the demands of a busy courtroom upon a justice of the peace; however, the committee noted that in the administration of justice, it is important not only that justice is done but also that justice is seen to be done. The public expects every justice of the peace to conduct matters professionally, patiently and in a manner upholding the high standards required of judicial office.

The complaints process through the Review Council is remedial in nature. Through the review of one's conduct, improvements are made as to how individuals are treated and situations handled in the future. The committee was of the view that the tone and manner in which His Worship conducted himself needed to be brought to his attention through having him attend in person before the complaints committee to receive advice, pursuant to section 11 (15)(b) of the *Justices of the Peace Act*. The committee chose this option after determining that there was some merit to the concerns raised by the complainant and the conduct complained did not warrant a different disposition under section 11(15) of the *Act*. The complaints committee considered that attendance in person to receive advice would assist His Worship in fully understanding and appreciating the importance of the impressions and perceptions of justice in maintaining and building the public's respect and confidence in the justice system.

During the advice meeting, the committee reviewed the complaint with His Worship, played portions of the audio recording of both court appearances and reflected on his responses to the complaint. The committee advised His Worship how others perceived his tone and the manner in which the two proceedings were conducted. The committee referenced the preamble to the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* which have been approved by the Justices of the Peace Review Council where it states:

> "The justices of the peace of the Ontario Court of Justice recognize their duty to establish, maintain, encourage and uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of their judicial office and to preserve the faith and trust that society places in the men and women who have agreed to accept the responsibilities of judicial office. All judicial officers are obligated to treat members of the public with courtesy and respect."

The committee encouraged His Worship to reconsider his conduct in his dealings with the complainant on both occasions with the view to improving his ability to conduct such matters professionally, patiently and by upholding the high standards expected.

Having provided its advice to His Worship in person, the committee informed the complainant of the disposition and closed its file.

CASE NO. 21-055/10, 21-056/10 AND 21-057/10

The complainant indicated that he attended at court on three occasions before three different justices of the peace, and sought to "exercise my right to unobtrusively record my own court hearing for the purposes of supplementing my notes." He advised that he had a hand-held audio recorder which he wanted to use to record each matter.

The complainant advised that each of the justices of the peace refused to allow him to record the proceedings. With respect to each justice of the peace, he alleged that:

- She failed to uphold the law and protect his rights in court.
- "By refusing to allow me to exercise my rights under the law, the justice of the peace has obstructed justice and has violated her duty as a justice of the peace".
- By showing a blatant lack of knowledge and respect of the application of section 136 of the *Courts of Justice Act*, the justice of the peace brought the administration into disrepute.

The complainant asked that the Council issue a memorandum to dictate to justices of the peace as to how the law should be interpreted or applied. He also asked that the Council advise each justice of the peace to recuse herself from hearing any court matter in which he may be a party.

In acknowledging his letters, the Council's Registrar sent a letter to the complainant explaining the legal jurisdiction of the Council. However, the complainant wrote back setting out his arguments as to why he thought that the Council should consider his allegations. The complainant's concerns were assigned to a complaints committee of the Review Council for consideration.

After a careful review of the complainant's letters and section 136 of the *Courts of Justice Act*, and consideration of the Council's authority under the *Justices of the Peace Act*, the committee dismissed the complaints against the three justices of the peace as being outside the jurisdiction of the Council. The committee found that the concerns of the complainant related to matters of law and to the interpretation and application of section 136. The committee viewed no evidence of misconduct within the context of the complainant's concerns. The committee advised that justices of the peace are judicially independent and the Justices of the Peace Review Council has no legal authority to direct justices of the peace as to how the law is to be interpreted and applied. Additionally, the Review Council has no legislative authority to

determine that a justice of the peace should recuse himself or herself from hearing any court proceeding. The complainants committee noted that if the complainant was unhappy with the decisions of these justices of the peace in denying his requests to record his proceedings, the proper way to proceed would be to pursue a legal remedy through the courts. The complainant was informed that a lawyer is in the best position to advise him as to his legal options or remedies.

For the above reasons, the complaints committee dismissed the complaints as being outside the jurisdiction of the Council and closed its files.

CASE NO. 21-061/10

The complainant attended for his provincial offences trial and raised concerns that he had not received full and proper disclosure. The trial was adjourned. Following his appearance, he filed a complaint against the presiding justice of the peace. In the complainant's opinion, His Worship's "conduct violated the standards of excellence and integrity required of him". The complainant specifically alleged that His Worship:

- "failed to be objective by privileging the arguments and voice of the Prosecutor and ignoring certain key arguments that I had advanced, thus manifesting bias";
- "dismissed as irrelevant references to the law that I had advanced without permitting me to elaborate upon their relevance";
- "crossed the line of appropriate firmness and honour to exhibiting impatient, undignified and discourteous conduct"; and,
- "showed little regard, at all times, to the interests of justice and the rights of the parties before the court – specifically, to my right to a fair trial through:
    a) full disclosure of all relevant information; and
    b) the provision of procedural guidance".

The complainant alleged that His Worship shouted at him, and neither invited nor permitted him to make a response to the prosecutor's "unbalanced submission" on the complainant's motion for a stay of proceedings. He also alleged that at times His Worship refused the complainant an opportunity to elaborate on his arguments in "a highly rude, interruptive and intimidating manner". The complainant indicated that it appeared that the witness, the prosecutor and His Worship were working together to pressure him to have the matter held down and have the trial proceed on that date. The complainant alleged that His Worship's conduct "pandered to

their interests and marginalized mine". The complainant also alleged that the justice of the peace was unwilling to hear his request for a stay of proceedings, failed to provide procedural guidance and didn't allow him to ask questions to clarify a procedural matter.

In conclusion, the complainant felt that His Worship "manifested bias, failed in his duty to give due consideration to the application of relevant laws, was highly discourteous and attempted to circumvent my rights to a fair trial – by pressuring me to accept a proposal that was clearly against my interests. Frankly, I found it difficult to discern the difference between the role of the Justice of the Peace and the role of the Prosecutor…". The complainant expressed that he left feeling "disrespected, denied fairness and justice and marginalized". He stated, "A justice of the Peace has a duty to uphold formality and decorum, to give respect to all parties and to foster an environment of inclusion – not intimidation."

The complainant wrote a second letter in which he stated that he observed other matters in court and it was his view that His Worship was in violation of professional standards in the execution of his duties towards other defendants. He suggested that the committee may wish to review other transcripts of proceedings on that day. As well, he indicated that he attended the hearing of his matter on a later date and was impressed by the conduct of a different justice of the peace. The complainant suggested that the committee compare His Worship's conduct to that of the other justice of the peace.

The complaints committee reviewed the complainant's letters and requested and reviewed the transcript. The committee also listened to the audio recording of the proceedings. After careful consideration, the complaints committee determined that there was no evidence to support the allegations made against His Worship. The committee noted that His Worship was helpful in explaining procedural matters to the complainant, a self-represented defendant. Further, the committee noted that His Worship was polite, fair and accommodating in listening to the complainant's concerns about disclosure and in his attempt to satisfy those concerns without undue delay.

The committee found that there was no evidence to support the allegations that His Worship failed to remain objective and unbiased and that he "pandered to the interests" of the prosecutor and police witness. The committee found no basis in His Worship's conduct that led to a concern that it would give rise to a feeling of being "disrespected" and "marginalized". With respect to the complainant's allegation that His Worship "crossed the line of appropriate firmness and honour to exhibiting impatient, undignified and discourteous conduct", the committee was of the view that the transcript and audio recording failed to reflect such conduct.

The committee noted that when the complainant requested a stay of proceedings rather than considering an adjournment, His Worship was emphatic and not discourteous or undignified,

as alleged. The record reflected that His Worship explained that a stay of proceedings is only granted in exceptional circumstances, that based on the information before him no exceptional circumstances existed and that if the complainant sought to make a motion on the basis of the *Charter*, the proper procedure had not been followed. His Worship also provided an opportunity for the matter to be held down so that the complainant could talk to the police witness and clarify the information that was received in disclosure. The committee noted that holding a matter down for such a purpose was a common practice in courts in order to use court time effectively and avoid the necessity of further delays to complete trials. Overall, the committee viewed His Worship's conduct and handling of the subject proceedings as reasonable, fair and balanced.

With respect to the complainant's suggestion that the committee may wish to review the transcripts of other proceedings on that day, or that the committee should compare His Worship's conduct to another justice of the peace's conduct, the committee there were no findings in its investigation that supported such further action.

For the aforementioned reasons, the complaints committee dismissed the complaint as unfounded and closed its file.

CASE NO. 22-002/11

The complainant was the mother of a young woman who was the respondent in a peace bond hearing before the subject justice of the peace. The complainant was in attendance as a witness for her daughter during the peace bond hearing brought about by an application by the daughter's ex-partner and his current girlfriend. The peace bond application was ultimately dismissed. The complainant was upset, however, about the comments made by Her Worship during the proceeding.

The complainant expressed concerns about Her Worship saying that the daughter's ex-partner, the father of her child, should be allowed more access to the child. The complainant questioned the basis for Her Worship making comments related to the family court proceedings in a criminal court setting. The complainant also considered the comments inappropriate in light of the criminal background of her daughter's ex-partner. The complainant alleged that Her Worship "kept saying that [the ex-partner] should be allowed more access to the child that he has with my daughter", further commenting that he "has had a couple of rough years". The complainant questioned, despite the evidence of his criminal past and present, "why would [Her Worship] even suggest that a two year old be exposed MORE to the criminal behaviour of his father?" and "does the court support more access to parents that have extensive criminal backgrounds, and parents that are currently charged with such large crimes?"

The complainant advised that she told Her Worship that her daughter's ex-partner had threatened to kill her and put her son in the hospital, and alleged that Her Worship "blew that off saying that kids today say they are going to kill people like they say hello, and yet she was so offended by all three (but particularly [the complainant's daughter]) using the "F" word in the confrontations". The complainant stated that Her Worship has the two behaviours crossed, as threatening physical violence is never acceptable in our society. Yet Her Worship appears to be "on a personal vendetta to "clean up" language." It was also alleged that Her Worship said that if she employed the daughter, her daughter wouldn't have a job because of the foul language she used during her confrontations with her ex-boyfriend and his girlfriend.

In addition, the complainant expressed concern about the amount of time given to the applicant's witnesses and not to her daughter's witnesses. "[Her Worship] listened to testimony from the "victim's" witnesses for one afternoon and most the other and then gave my daughter's witnesses (of which I was one of three) moments to testify". Her Worship had allegedly made other comments praising the ex-partner's mother for being such an example, despite evidence before the court that she had lied and taken actions to try to have the complainant's daughter fired from her work. "All of this came out in court, but [Her Worship] didn't seem to hear it".

In summary, the complainant alleged that "the personal comments made to my daughter and to myself were extremely uncalled for and unprofessional".

The complaint was assigned to an investigating complaints committee. The committee reviewed the complainant's letter and requested and reviewed the transcript and audio recording of the peace bond hearing. Following careful review of the materials and the court record, the committee found that the complainant's allegations about the comments made in relation to the access of the father to his child were supported by the court record. The committee noted that although Her Worship acknowledged in the proceedings that the issue of access was a matter to be determined by a family court, Her Worship made a number of comments in which she expressed her view that the father should have more access to his child.

With respect to the allegation that Her Worship gave less time to the daughter's witnesses, the committee found that the court record showed that Her Worship commented that she was willing to listen to the witnesses called by the complainant's daughter but that she didn't think that they would help. Her Worship then permitted witnesses to be called before deciding that no peace bond would be issued.

The committee also found that the record confirmed that Her Worship expressed her view that the case was a waste of court time and that she expressed her personal views of the case. She

also expressed her view that that parties involved should start acting like adults and stop using disgusting vulgar language. She also told the complainant's daughter and the other female party to "eliminate the "f" word from your language, ladies."

The complaints committee invited a written response from Her Worship to the complaint generally but specifically invited Her Worship to respond on the issue of her comments about the father's access to his child.

The committee observed that Her Worship's response showed that Her Worship had genuinely and thoughtfully reflected on her conduct during the proceedings. The committee observed that in her response, Her Worship recognized that she had allowed the line between criminal and family law to become blurred. Her Worship acknowledged that her comments about the father's access to his child were inappropriate, unnecessary, and outside of her jurisdiction to make. The committee noted that Her Worship expressed regret for not limiting her comments to the issue of whether to grant the application for a peace bond. The committee noted that Her Worship extended a sincere apology to the complainant and her daughter for allowing her role as a mother to interfere with her role as a justice of the peace on this occasion. The committee was satisfied that through the review of her conduct in this matter, Her Worship had carefully reassessed her conduct as a judicial officer and had a heightened awareness of the importance of refraining from expressing personal views during proceedings and of limiting her comments and decisions to matters that are at issue before her.

The committee concluded that Her Worship's response was both comprehensive and candid to the allegations and concerns expressed. The committee was satisfied that Her Worship understood the complainant's concerns and how her conduct fell short of the high standards of conduct expected for judicial officers. The committee understood Her Worship's intentions of trying to encourage positive discussions and resolutions among the parties, and accepted that she now fully appreciated that notwithstanding her positive intentions, her personal opinions should not have been expressed.

The complaints process through the Review Council is remedial in nature and through the review of and reflection upon one's conduct, improvements are made as to how situations and individuals are treated and handled in the future. The committee was satisfied that Her Worship had learned from the experience and that Her Worship would apply that learning to cases in the future.

After careful consideration, the complaints committee determined that no further action was required, dismissed the complaint, and closed the file. The committee thanked the complainant for bringing her concerns to the attention of the Justices of the Peace Review Council.

Case Summaries

CASE NO. 22-003/11

The complainant had sworn a private information alleging criminal conduct by an individual. The complainant attended before the subject justice of the peace at a *pre-enquête* proceeding, where it was to be determined whether or not a criminal summons would be issued to the accused.

The complainant alleged that His Worship handled him and his matter in a "premeditated and pre-determined manner". According to the complainant, His Worship baited him "into stating that I was initiating a *Charter* application", as an attempt to set him up. The complainant also alleged collusion with other judicial and legal officials to set him up. The complainant alleged that His Worship prevented "any and all of the evidence that I wanted to enter" and "once again baited by entrapping and inducing me into entering something into evidence that the Justice of the Peace wanted". The complainant advised that when he confronted His Worship about his "pre-meditated mindset", he alleged that His Worship "became very theatrical and dramatic" and was very offended by the complainant's insinuations.

The complainant believed that His Worship was aware that there were "pending charges and legal ramifications against me" and suggested that this "may explain the reasons for some of his inappropriate, inexcusable and unwarranted actions". According to the complainant, it was "highly evident that the presiding Justice of the peace in this matter already possessed developed biases, prejudices and discriminations towards me prior to the commencement of the proceedings".

The complaint was assigned to an investigating complaints committee. The committee thoroughly reviewed the complaint materials provided and ordered and carefully reviewed the transcript of the court proceeding.

The committee found that the transcript showed that His Worship allowed the complainant the opportunity to speak to his matter and there was no evidence of bias, prejudice, coercion, collusion or treatment of him or his matter in a "pre-meditated or pre-determined manner". The complaints committee considered each of the allegations and found that the court record did not support any of the allegations made against His Worship [name].

For the aforementioned reasons, the complaints committee concluded that the allegations were unfounded and dismissed the complaint.

APPENDIX A

Case Summaries

CASE NO. 22-004/11

This was a complaint against a justice of the peace who issued of a Form 2 under the *Mental Health Act* authorizing the police to take the complainant to a physician for examination.

The complainant advised that he and his wife had on-going family court matters before the Superior Court of Justice involving their children. The wife applied for a Form 2 to have a psychiatric evaluation of her husband, as she felt he was delusional. The complainant advised that His Worship granted the wife's application for a Form 2, which resulted in him being apprehended and assessed by a physician.

Aside from the issuance of the Form 2, the complainant alleged that during the apprehension, his rights were violated by the police; specifically that he was not secure against unreasonable search or seizure, he was arbitrarily detained, was not read his rights, and he was denied access to a lawyer or rights advisor, suffered cruel and unusual punishment of being secured in a psychiatric unit, and was forced to take medication and questioned against his free will.

With respect to the allegations against the justice of the peace, the complainant indicated that he was denied access to the evidence used against him that resulted in the Form 2 being issued. Enclosed in the materials from the complainant was a copy of an e-mail from court staff to His Worship regarding the complainant's request for a copy of the transcript of the Intake Court appearance by his wife. The complainant's request was denied by His Worship.

In the letter acknowledging receipt of the complaint, it was explained to the complainant that the jurisdiction of the Council does not extend to reviewing allegations of corruption in the Superior Court of Justice with respect to his family court matters or any complaints against the police in relation to execution of the Form 2 and his apprehension. In addition, the complainant was informed that the Council can only review matters of conduct or behaviour by a justice of the peace and has no authority to review or change decisions of a justice of the peace.

The complaint was assigned to an investigating complaints committee. The committee reviewed the complainant's letter and attachments. After careful consideration, the committee determined that the only allegations against the subject justice of the peace related to his decision to issue the Form 2 and his decision to not release the transcript of the Intake Court session with the complainant's wife. The committee found that the allegations raised by the complainant were not within the jurisdiction of the Review Council. If the complainant disagreed with the decisions, the proper way to proceed was through legal remedies in court.

For the aforementioned reasons, the complaints committee dismissed the complaint as being outside the jurisdiction of the Justices of the Peace Review Council and closed its file.

Case Summaries

CASE NO. 22-009/11

The complainant made several allegations in relation to the issuance of a search warrant by a justice of the peace and about the detention of items that were seized under the warrant. The complaints committee reviewed and considered all of the allegations that were put forward by the complainant.

The committee found that the allegations did not fall within the jurisdiction of the Review Council. Rather, the committee noted that if the complainant had concerns about the process in obtaining a search warrant, about the warrant itself or about the detention of seized items, the proper way to proceed would be to advance those matters at the trial of the charge to which the warrant related, and the issues could be ruled on by the presiding judge. The complaint committee dismissed the complaint as being outside of the Review Council's jurisdiction and closed its file.

CASE NO. 22-011/11

The complainant filed a complaint about an unnamed male justice of the peace arising from her court appearance to obtain a peace bond. Based on the information provided by the complainant, the presiding justice of the peace was identified.

The complainant indicated that she was before the court to seek a peace bond against her ex-husband. The complainant expressed her displeasure with how her matter was handled by His Worship. She alleged that His Worship "humiliated me in front of everyone". She alleged that each time when she said she needed a peace bond because her life was in danger, His Worship stated that she should "just call the police" repeatedly. She also alleged that when she tried to say that the police were not doing anything, His Worship said, "Hush, hush, I now need to speak to someone." She later told the Crown Attorney that she did not attend court for the hearing because she felt that it would be a waste of time again.

The complaint was assigned to a complaints committee for review and investigation. The committee requested and reviewed the transcript and audio recording of the subject proceedings. Following its review, the committee concluded that there was no support for a finding of misconduct against His Worship.

The committee found that the transcript and audio recording showed that there was no evidence to suggest that His Worship humiliated or attempted to humiliate the complainant.

The committee noted that a lack of signature on the peace bond application did not impact on her matter as a summons was issued and the defendant was before the court. Further, failure to sign the application was not found to be judicial misconduct.

The committee appreciated the concerns the complainant had about her safety. The record reflected, however, that the matter could not be heard that day, as the defendant had requested time to get legal representation. The committee found that the transcript and audio recording showed that His Worship acted patiently and appropriately in scheduling her matter for a hearing and advising her to contact the police if she had safety concerns in the interim.

For the aforementioned reasons, the complaints committee dismissed the complaint and closed its file.

CASE NO. 22-015/11

The complainant filed a complaint about the presiding justice of the peace in relation to peace bond proceedings involving the complainant's neighbour. She alleged that her civil rights were violated by Her Worship.

The complainant indicated that she had sworn a peace bond application in relation to allegations of harassment, intimidation and property damage by her neighbour. The matter was scheduled to be heard but was delayed, which according to the complainant, "gave the two parties I was bringing the action against, time to begin to harass me and my family more and more". The complainant stated that the proceedings were further delayed with "outright lies" by the respondents and their lawyer. The complainant advised that the Crown Attorney's office became involved and asked the complainant to attend prior to the final court attendance but then avoided them and the matter proceeded before the subject justice of the peace.

The complainant stated that she and her husband "watched in disbelief" as one of the defendants took the stand and under oath "portrayed herself to be a quiet old woman whose jaw shook when she talked... began to shake her head left to right and fake a condition does not have". According to the complainant, despite the Crown Attorney being aware that she was a "very healthy, very strong woman", she was allowed to continue and portray herself to the court as a frail old lady, whose doctor "thought she may be getting Parkinson's disease". The complainant alleged that it seemed as though "some form of meeting took place prior to the hearing that morning between the judge, [crown attorney] and [defence lawyer]".

The complainant further alleged that while sitting and looking at the floor, she heard "in a stern, extremely loud voice — 'GET OUT!'—" which Her Worship directed at her. She alleged Her Worship repeated, "GET OUT!" and pointed and said again "YOU GET OUT!". Allegedly, she was told to stay outside until told differently. She stated that without being given the opportunity to be heard on her application, she was brought in after the break and allegedly

only given the option of signing a joint peace bond. She indicated that she was crying and demanded that the Crown Attorney do something, but felt that she had no choice and signed the peace bond.

After signing the peace bond in the hallway, she returned to the court where Her Worship gave a speech about "being good neighbours". Her Worship then allegedly "had cross words to both me and my husband, who is not even on the bond, causing me to start to cry. She attacked me again for crying."

The complainant advised that the neighbor had violated the bond and continued to harass and attack her family, even filing false police reports. She stated that just weeks before the bond was over, there was an incident where the son had tried to run the complainant off the road with his truck. She was referred to the police whom she said did nothing as they were concerned over the number of false reports. The complainant advised that she was arrested for violating the peace bond.

The complainant wanted "something done with this judge whos(sic) actions caused [the neighbours] to believe they could use any court, any judge, and police officer to bully me". She advised that the stress was affecting her life, health and family. The complainant alleged that Her Worship violated her rights as a disabled person (anxiety disorder), violated her rights to a fair hearing, violated her rights to be treated equal under the law, discriminated against her based on age or considered her guilty until proven innocent.

The complaint was assigned to a three-member complaints committee for review and investigation. The committee reviewed the correspondence and attachments submitted by the complainant. The committee obtained and reviewed the transcript and audio recording of the peace bond proceedings before the subject justice of the peace.

After careful review, the committee found that the court record did not support any of the allegations of misconduct made against Her Worship, including allegations that Her Worship violated the complainant's rights as a disabled person, violated her rights to a fair hearing, violated her rights to be treated equal under the law, discriminated against her based on age and considered her guilty until proven innocent.

With respect to Her Worship ordering the complainant to leave the courtroom, the committee noted that the transcript showed that defence counsel had raised concerns about the complainant being present and about reactions from her while his client, the defendant, was giving evidence. The committee observed that Her Worship exercised her judicial discretion in allowing the complainant and her husband to stay but cautioned, "I don't want to see any facial expressions, I don't want to see any reaction because if I see the mere, mere limited amount of that I will

ask both of you to leave the courtroom. Is that clear?". It was noted that partway through the evidence of the defendant, the record reflected that Her Worship stopped the proceedings and ordered, "You, out. I want you out right now... I'm asking you to leave the courtroom now. I cautioned both of you before we started. You will be paged when you're needed." The committee found that the audio recording failed to support the complainant's allegation that Her Worship expressed herself in a "stern, extremely loud voice".

With respect to the allegation of not being given an opportunity to be heard on her application and allegedly only given the option of signing a joint peace bond, the record reflected that the complainant had voluntarily entered into a joint peace bond, thereby not requiring a full hearing in the matter. The court record showed that Her Worship provided time for the Crown Attorney and defence counsel to consult with the complainant and defendants respectively. Her Worship was not party to those conversations and the record did not reflect any objection from the complainant when asked if she was agreeable to entering into the peace bond voluntarily.

The record also did not support the complainant's allegation that Her Worship "had cross words" for the complainant and her husband and then "attacked" her for crying. The record reflected that Her Worship commented about how "neighbours are supposed to be guards for each other, not in fight with each other". The committee viewed these remarks as appropriate and intended to be encouraging in the hopes of future peaceful relations between the parties.

For the above mentioned reasons, the complaints committee dismissed the complaint and closed its file.

CASE NO. 22-022/11

A police officer wrote to the Council arising from efforts by the police to obtain a search warrant. The officer expressed disagreement with a justice of the peace's denial of the search warrant and with her reasons for doing so. The officer stated his view that the original warrant should have been issued, and indicated further concerns arising from Her Worship's subsequent decision, following a resubmission of the search warrant, to authorize the warrant but with an 8:00 a.m. entry, rather than a 6:00 a.m entry.

The complaints committee reviewed and considered the letter of complaint. The committee determined that the decision of Her Worship to decline to grant the search warrant, and, after resubmission of the warrant, to then permit execution of the warrant at 8:00 a.m., and her reasons for those decisions, were not matters of judicial conduct. Rather, they were matters of judicial discretion. The Justices of the Peace Review Council's legislative authority extends

only to the review and consideration of judicial conduct. Matters of judicial discretion, such as decisions on the issuance of or refusal to grant a search warrant are matters that would need to be pursued through legal remedies through the courts, such as a judicial review or an appeal.

The committee observed that in the circumstances that were described by the police officer, given the timing of the events, the matters did not lend themselves to a legal remedy through the courts. However, the fact that a legal remedy was not feasible in the particular circumstances does not alter the legal character of the appropriate remedy or extend the legal parameters of the mandate of the Review Council.

Pursuant to section 11(15)(a) of the *Justices of the Peace Act*, the committee dismissed the complaint on the basis that it was outside of the jurisdiction of the Justices of the Peace Review Council and the file was closed.

APPENDIX B

POLICY ON EXTRA-REMUNERATIVE WORK AND APPLICATIONS CONSIDERED

Note:
This version of the procedures reflects decisions of
the Review Council up to December, 2011.
For current procedures, please see the Review Council's website at:
www.ontariocourts.ca/ocj/jprc/policies-and-procedures/extra-remunerative-work/

POLICY OF THE JUSTICES OF THE PEACE REVIEW COUNCIL RE: EXTRA-REMUNERATIVE WORK

CRITERIA & PROCEDURE FOR APPROVAL

1) Effective January 1, 2007, all justices of the peace, whether presiding or non-presiding, are required to seek the written approval of the existing Justices of the Peace Review Council before accepting or engaging in any extra-remunerative work, in accordance with section 19 of the *Justices of the Peace Act*, as amended January 1, 2007.

s. 19; subs. 8(2)(e)

2) All such applications to the Justices of the Peace Review Council will be considered by the Review Council at the earliest possible opportunity and the justice of the peace will be advised of its decision, in writing.

Application Procedure

3) An application for such approval must be made by the justice of the peace to the Justices of the Peace Review Council, in writing, prior to accepting or engaging in other extra-remunerative work and must set out a detailed explanation of the activity for which approval is sought, an estimate of the time commitment required and the amount of the remuneration. The applicant must also address in his or her letter each of the criteria indicated below that will be considered by the Review Council.

4) This application must be accompanied by a letter from the relevant Regional Senior Justice of the Peace providing his or her opinion with respect to any concerns about potential impacts related to scheduling and the applicant's assignment of duties.

5) The Council looks at two aspects in relation to remuneration associated with the work. Firstly, the Council considers whether the work gives rise to any remuneration to the applicant justice of the peace. Secondly, the Council considers that a justice of the peace is engaged in extra-remunerative work when that justice of the peace is a party to someone else's remunerative work. Once the Council has established whether there is any remuneration, the policy and criteria set out in the Council's Extra-Remunerative Policy are considered.

Extra-Remunerative Work Applications

6) The following are some of the criteria which should be addressed by the applicant in the letter of application and which will be considered by the Review Council in assessing whether or not approval will be granted:

   a) whether there is an actual, or perceived, conflict of interest between the duties as assigned and the extra-remunerative activity for which approval is sought;

      (examples of potential conflict of interest include: employment by government in any capacity related to the administration of justice, the courts or corrections, engagement in the practice of law, employment in a legal clinic or a law firm, etc.)

   b) whether the nature of the activity for which the justice of the peace seeks approval will present an intrusive demand on the time, availability or energy of the justice of the peace and his or her ability to properly perform the judicial duties assigned;

   c) whether the activity for which the justice of the peace seeks approval is a seemly or appropriate activity in which a judicial officer should engage, having regard to the public perceptions of judicial demeanour, independence and impartiality.

      The Council has noted that the criterion in paragraph c) above must be understood in the context of the public policy encapsulated in the legislative framework set out in the *Justices of the Peace Act* R.S.O. 1990, c. J.4, as amended and, in particular, in view of the amendments that resulted from the *Access to Justice Act*, 2006, S.O. 2006, c. 21. The amendments brought about a comprehensive reform intended to strengthen public confidence in a professional bench and in the justice system.

      Having carefully considered the public policy underlying the current legislative framework, the objectives of the amendments underlying the *Access to Justice Act*, 2006, and the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice*, the Review Council has determined that it would in general be unseemly for full-time presiding justices of the peace to be engaged in commercial extra-remunerative work.

      The Review Council has approved some applications to extra-remunerative work by full-time presiding justices of the peace on an exceptional basis in limited circumstances where the activity was primarily non-commercial and had other intrinsic value from an educational, patriotic, religious or creative standpoint. In accordance with the Council's procedures, an applicant who seeks approval to engage in commercial activity should address the issue of why the application

for extra-remunerative work should be approved as an exception to the general policy that full-time presiding justices of the peace should not engage in extra-remunerative work that is commercial in nature.

Additional Information

7) If upon its review of the application, the Review Council is not satisfied that there is sufficient information, the Review Council may request such additional information as the Review Council may deem necessary and relevant, including information from the justice of the peace, the Regional Senior Justice of the Peace or any other person.

Approval of Application without Conditions

8) If, upon its review of the application and any additional material, the Review Council is satisfied that there is sufficient information to approve the application, without conditions, the Review Council will approve the application. The applicant justice of the peace will be advised in writing of the decision of the Review Council, including brief reasons for the decision.

Opportunity to Respond to Concerns

9) If, upon its review of the application and any additional information, the Review Council has concerns about granting the application, the Review Council will provide a letter to the applicant justice of the peace setting out its concerns. The Review Council may also suggest conditions of approval to address those concerns.

10) The justice of the peace will be given an opportunity to respond to the concerns of the Review Council and to respond to any suggested conditions by sending submissions in writing to the Review Council. If the justice of the peace agrees with the conditions, he or she should respond to the Review Council confirming his or her agreement with the approval being contingent upon the conditions.

11) The justice of the peace will be given thirty calendar days to respond from the date of the letter from the Review Council expressing its concerns. If a response is not received from the applicant justice of the peace within that time, the Review Council members considering the request will be notified and a reminder letter will be sent to the justice of the peace. If no response is received within ten calendar days from the date of the reminder letter, the Review Council will proceed in the absence of a response.

Extra-Remunerative Work Applications

Decision

12) The Review Council will consider the response of the justice of the peace, if any, in making its decision. The justice of the peace will be advised in writing of the Review Council's approval of the application and of the conditions, if any, upon which the approval is contingent. In the alternative, the justice of the peace will be advised in writing that the request has not been approved. Brief reasons will be provided for the decision.

No Authority to Order Compensation for Legal Costs

13) The Review Council does not have legislative authority to recommend or order compensation for costs of legal services incurred as a result of an application for extra-remunerative work.

Application Process in Private

14) Any meeting of the Review Council regarding applications for extra-remunerative work shall be conducted in private. Pursuant to section 8(18) of the *Justices of the Peace Act*, the Review Council has ordered that any information or documents relating to any meeting of the Review Council to consider an application to engage in extra-remunerative work are confidential and shall not be disclosed or made public.

subs. 8(18)

Quorum of Review Council

15) The usual rules for composition and quorum apply to meetings for the purposes of considering applications for extra-remunerative work. The Chief Justice of the Ontario Court of Justice, or in his or her absence, the Associate Chief Justice Co-ordinator of Justices of the Peace, shall chair meetings held for the purposes of considering applications for extra-remunerative work. Six members of the Review Council, including the chair, constitute a quorum for the purposes of dealing with an application for approval of extra-remunerative work. At least half of the members present must be judges or justices of the peace. The chair is entitled to vote, and may cast a second deciding vote if there is a tie.

subs. 8(7),(8) and (11)

Extra-Remunerative Work Applications

Annual report

16) After the end of each year, the Review Council shall make an annual report to the Attorney General on its affairs including a summary of each application for approval of extra-remunerative work received or dealt with during the year and the decision of the Review Council, but the report shall not include information that might identify the justice of the peace or the Region in which he or she presides.

subs. 9(7)

Amended at Toronto, June 4, 2010.

APPLICATIONS FOR APPROVAL OF EXTRA-REMUNERATIVE WORK IN 2011

Applications for approval of extra-remunerative work are given File names starting with ER indicating the nature of the application, followed by a sequential file number and by two digits indicating the calendar year in which the file was opened (i.e., File No. ER-001/11 was the first application for approval in calendar year 2011).

Names of applicants are not included in the case summaries.

CASE NO. ER-21-006/10

The Review Council approved a request from a justice of the peace to teach front-line staff hired by youth healing services, including making presentations centred on how to administer risk-needs assessments on youth who are residents in the group homes. The justice of the peace indicated that she would also assist in teaching front-line staff as to how to write reports about their observations of youth residents in care, and how to host life skills sessions. Occasionally, she might provide mental health education sessions to clinical supervisors. She would also teach front-line staff as to how to educate and inform parents about the youth issues and trends affecting citizens within their communities. The training will occur one to three weeks per year.

None of the staff whom she would train would attend court other than on rare occasions to accompany or transport a youth to court. As well, the reports that the front-line and group home staff prepare would not be used for court.

The Council received confirmation from Regional Senior Justice of the Peace that approval of the request to deliver training during the justice of the peace's annual leave from work as a justice of the peace would present no difficulties in fulfilling judicial assignments and scheduling.

The Review Council approved the request subject to the following conditions and comments:

1) The availability to instruct must be subject to the primary responsibilities of a justice of the peace and as such must be undertaken at times when the justice of the peace is not otherwise assigned to judicial duties and where she has requested either vacation or compensating time off. The Council is of the view that non-presiding days should not be used for such purposes.

2) Delivering the training must not interfere with her obligations as a justice of the peace.

3) It was a requirement that the justice of the peace ensure that delivering the training must not interfere with her obligations in relation to the requisite continuing education programs being held for justices of the peace.

4) The justice of the peace must maintain distance in the completion of her teaching of this course from the role and responsibilities as a judicial officer, particularly in relation to avoiding any reference to the judicial position in the extra- remunerative work activities.

5) The justice of the peace may accept remuneration for these services, but such remuneration must be the same as that paid to others and be without regard to the position of a justice of the peace.

6) The Review Council reserved the right to revisit the request and its decision should any relevant circumstances change.

CASE NO. ER-22-001/11

The justice of the peace applied for approval to practise law on a part-time basis as a sole-practitioner, providing services as a solicitor, mediator and arbitrator while holding office as a *per diem* justice of the peace.

The Council concluded that a justice of the peace who holds office in the Ontario Court of Justice should not be permitted to appear as counsel before judges or justices of the peace of that Court. Confidence in the judiciary and in the administration of justice requires not only that judges and justices of the peace are impartial and objective in carrying out their duties, but that they are seen to be impartial and objective. The appearance of a justice of the peace in the role of counsel before one of his or her judicial colleagues of the same Court could give rise in the minds of members of the public to a perception of partiality or unfairness. Even though there would be no actual partiality or favouritism toward the justice of the peace, there could be an appearance of partiality or favouritism.

The Council approved the request to engage in extra-remunerative work as a part-time sole practitioner, mediator and arbitrator subject to the following conditions:

1) The extra-remunerative work must not present any potential impact on the justice of the peace's judicial responsibilities or pose issues relating to fulfilling scheduling obligations at the base court location.

2) The availability to practise law must be subject to the responsibilities of a justice of the peace and as such must be undertaken at times when the justice of the peace is not otherwise assigned to judicial duties and not scheduled to sit as a *per diem* justice of the peace.

3) The justice of the peace must maintain distance in the work as a lawyer, an arbitrator or mediator, from the role and responsibilities as a judicial officer, particularly in relation to avoiding any reference to the judicial position in the extra remunerative work activities, including but not limited to refraining from mentioning the role or experience as a justice of the peace on letterhead, business cards, advertisements, resumes or in conversation with any persons with whom the justice of the peace has contact in the capacity of a lawyer, mediator or arbitrator.

4) In the extra-remunerative capacity, the justice of the peace must not appear before the Ontario Court of Justice, or have any direct or indirect dealings with any matters that may be before the Ontario Court of Justice.

5) Because of the unique nature of the role of a justice of the peace in the administration of justice, the office could be brought into disrepute by a real or alleged failure of a practising lawyer, who continues to hold judicial office, to observe the ethical and other standards of the Law Society of Upper Canada. Public confidence in the judicial office could be undermined if a lawyer who is also a justice of the peace is the subject of discipline by the Law Society. For those reasons:

   a) The justice of the peace must be a lawyer in good standing with the Law Society of Upper Canada and practise law in compliance with the Law Society's Rules of Professional Conduct, including but not limited to Rule 6.05 of the *Law Society's Rules of Professional Conduct for Lawyers*, which is set out below:

      6.05 THE LAWYER IN PUBLIC OFFICE

      Standard of Conduct

      6.05 (1) A lawyer who holds public office shall, in the discharge of official duties, adhere to standards of conduct as high as those that these rules require of a lawyer engaged in the practice of law.

      Commentary

      The rule applies to a lawyer who is elected or appointed to a legislative or administrative office at any level of government, regardless of whether the lawyer attained the office because of professional qualifications. Because such a lawyer is in the public eye, the legal profession can more readily be brought

into disrepute by a failure to observe its ethical standards. Generally, the Society will not be concerned with the way in which a lawyer holding public office carries out official responsibilities, but conduct in office that reflects adversely upon the lawyer's integrity or professional competence may be the subject of disciplinary action.

Conflict of Interest

(2) A lawyer who holds public office shall not allow professional or personal interests to conflict with the proper discharge of official duties.

Commentary

The lawyer holding part-time public office must not accept any private legal business where duty to the client will, or may, conflict with official duties. If some unforeseen conflict arises, the lawyer should terminate the professional relationship, explaining to the client that official duties must prevail. The lawyer who holds a full-time public office will not be faced with this sort of conflict but must nevertheless guard against allowing independent judgment in the discharge of official duties to be influenced either by the lawyer's own interest, that of some person closely related to or associated with the lawyer, that of former or prospective clients, or former or prospective partners or associates. Subject to any special rules applicable to the particular public office, the lawyer holding the office who sees that there is a possibility of a conflict of interest should declare the possible conflict at the earliest opportunity, and not take part in any consideration, discussion or vote concerning the matter in question.

(3) If there may be a conflict of interest, a lawyer who holds or who held public office shall not represent clients or advise them in contentious cases that the lawyer has been concerned with in an official capacity.

b) The justice of the peace must notify the Justices of the Peace Review Council of any notification by the Law Society of a complaint or investigation by the Law Society.

6) The Council noted that for lawyers, if a complaint about conduct is made to the Law Society of Upper Canada, the lawyer's obligation to respond to the Law Society's investigators includes providing information that is confidential and/or covered by solicitor-client privilege. While disclosure to the Law Society does not constitute a waiver of solicitor-client privilege, that same protection would not apply if there was

a complaint to the Justices of the Peace Review Council. The justice of the peace had to knowingly assume that risk if he chose to practise law while holding the office of a justice of the peace.

7) The justice of the peace may accept remuneration for providing legal services, but such remuneration must be the same as that paid to others and be without regard to the position as a justice of the peace.

8) The Review Council reserved the right to revisit the request and its decision should any relevant circumstances change.

CASE NO. ER-22-002/11

The justice of the peace requested approval to teach two courses at a college for one term. The request was approved after the Regional Senior Justice of the Peace confirmed that he supported the application and that in the past this justice of the peace easily managed his assignments and teaching activities.

The approval was subject to the following conditions:

1) Any remuneration accepted for these services be the same as that paid to other instructors without regard to the position of a justice of the peace.

2) Availability to instruct must not impact upon the availability to fulfill the primary responsibilities of a justice of the peace during assigned hours.

3) It was noted that it is the view and preference of Council that educational teachings by justices of the peace be engaged in during the evenings rather than during weekdays, so as not to present any potential impact on judicial responsibilities or pose issues relating to fulfilling scheduling obligations at a base court location. The availability to instruct must be subject to primary responsibilities as a justice of the peace and as such must be undertaken at times when a justice of the peace is not otherwise assigned to judicial duties and where he or she has requested either vacation or compensating time off. Council was of the view that non-presiding days should not be used for such purposes.

4) The Review Council reserved the right to revisit the request and its decision should any relevant circumstances change.

Extra-Remunerative Work Applications

CASE NO. ER-22-003/11

The Council approved an application for approval to teach at a Faculty of Law at a university during the evenings for one term. The approval of Council was granted recognizing that the Regional Senior Justice of the Peace confirmed that Council's approval of the request would present no difficulties in fulfilling judicial assignments during the period of teaching. The approval was subject to the following conditions:

1) Any remuneration accepted for these services be the same as that paid to other instructors without regard to Her Worship's position as a justice of the peace.

2) Availability to instruct must not impact upon the availability to fulfill the primary responsibilities of a justice of the peace during assigned hours. As such, availability to instruct must be undertaken at times when the justice of the peace is not otherwise assigned to judicial duties and has requested either vacation or compensating time off. Council was of the view that non-presiding days should not be used for such purposes.

3) The Review Council reserved the right to revisit the request and its decision should any relevant circumstances change.

APPENDIX C

PRINCIPLES OF JUDICIAL OFFICE OF JUSTICES OF THE PEACE OF THE ONTARIO COURT OF JUSTICE

APPENDIX C

Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice

"Respect for the Judiciary is acquired through the pursuit of excellence in administering justice."

PRINCIPLES OF JUDICIAL OFFICE OF JUSTICES OF THE PEACE OF THE ONTARIO COURT OF JUSTICE

PREAMBLE

A strong and independent judiciary is indispensable to the proper administration of justice in our society. Justices of the peace must be free to perform their judicial duties without fear of reprisal or influence from any person, group, institution or level of government. In turn, society has a right to expect those appointed as justices of the peace to be honourable and worthy of its trust and confidence.

The justices of the peace of the Ontario Court of Justice recognize their duty to establish, maintain, encourage and uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of their judicial office and to preserve the faith and trust that society places in the men and women who have agreed to accept the responsibilities of judicial office.

The following principles of judicial office are established by the justices of the peace of the Ontario Court of Justice and set out standards of excellence and integrity to which all justices of the peace subscribe. These principles are not exhaustive. They are designed to be advisory in nature and are not directly related to any specific disciplinary process. Intended to assist justices of the peace in addressing ethical and professional dilemmas, they may also serve in assisting the public to understand the reasonable expectations which the public may have of justices of the peace in the performance of judicial duties and in the conduct of their personal lives.

APPENDIX C

Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice

1. THE JUSTICE OF THE PEACE IN COURT

1.1 Justices of the peace must be impartial and objective in the discharge of their judicial duties.

Commentaries:

Justices of the peace should not be influenced by partisan interests, public pressure or fear of criticism.

Justices of the peace should maintain their objectivity and shall not, by words or conduct, manifest favour, bias or prejudice towards any party or interest.

1.2 Justices of the peace have a duty to follow the law.

Commentaries:

Justices of the peace have a duty to apply the relevant law to the facts and circumstances of the cases before the court and to render justice within the framework of the law.

1.3 Justices of the peace will endeavour to maintain order and decorum in court.

Commentaries:

Justices of the peace must strive to be patient, dignified and courteous in performing the duties of judicial office and shall carry out their role with integrity, appropriate firmness and honour.

2. THE JUSTICE OF THE PEACE AND THE COURT

2.1 Justices of the peace should approach their judicial duties in a spirit of collegiality, cooperation and mutual assistance.

2.2 Justices of the peace should conduct court business with due diligence and dispose of all matters before them promptly and efficiently having regard, at all times, to the interests of justice and the rights of the parties before the court.

2.3 Reasons for judgment should be delivered in a timely manner.

2.4 Justices of the peace have a duty to maintain their professional competence in the law.

Commentaries:

Justices of the peace should attend and participate in continuing legal and general education programs.

Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice

2.5 The primary responsibility of justices of the peace is the discharge of their judicial duties.

Commentaries:

Subject to applicable legislation, justices of the peace may participate in law related activities such as teaching, participating in educational conferences, writing and working on committees for the advancement of judicial interests and concerns, provided such activities to do not interfere with their primary duty to the court.

3. THE JUSTICE OF THE PEACE IN THE COMMUNITY

3.1 Justices of the peace should maintain their personal conduct at a level which will ensure the public's trust and confidence.

3.2 Justices of the peace must avoid any conflict of interest, or the appearance of any conflict of interest, in the performance of their judicial duties.

Commentaries:

Justices of the peace must not participate in any partisan political activity.

Justices of the peace must not contribute financially to any political party.

3.3 Justices of the peace must not abuse the power of their judicial office or use it inappropriately.

3.4 Justices of the peace are encouraged to be involved in community activities provided such involvement is not incompatible with their judicial office.

Commentaries:

Justices of the peace should not lend the prestige of their office to fund-raising activities.

APPENDIX D

HEARING RE JUSTICE OF THE PEACE PAUL KOWARSKY

JUSTICES OF THE PEACE REVIEW COUNCIL

IN THE MATTER OF A HEARING UNDER SECTION 11.1 OF THE *JUSTICES OF THE PEACE ACT*, R.S.O. 1990, C. J.4, AS AMENDED,

Concerning a Complaint about the Conduct of Justice of the Peace Paul Kowarsky

Before: The Honourable Justice Kathryn L. Hawke
Regional Senior Justice, Chair

Her Worship Cornelia Mews, Senior Justice of the Peace

Mr. Steven G. Silver, Community Member

Hearing Panel of the Justices of the Peace Review Council

Reasons for Decision

Counsel:

Ms. Marie Henein Henein and Associates	Mr. Mark Sandler Cooper and Sandler, LLP
Presenting Counsel	Counsel for His Worship Paul Kowarsky

APPENDIX D

Hearing Re Justice of the Peace Paul Kowarsky

INTRODUCTION

[1] The Justices of the Peace Review Council, pursuant to Section 11(15)(c) of the *Justices of the Peace Act* R.S.O. 1990, c.J.4, as amended (the "Act"), ordered that a complaint regarding the conduct of Justice of the Peace Paul Kowarsky be referred to a Hearing Panel of the Review Council, for a formal hearing under Section 11.1 of the Act.

[2] By way of Notice of Hearing, dated March 22, 2011, the hearing process began. The Panel convened on March 25, 2011. Pre-hearing motions and procedural matters were addressed on March 25, 2011 and April 26, 2011. On May 6, 2011 the Panel received evidence and heard submissions. The hearing adjourned to May 30, 2011 for disposition.

[3] The Notice of Hearing – Appendix A particularized complaints involving the events of three dates. These dates, in the order set out in the Appendix are:

1) January 29, 2010;

2) a date between 2008 and January 29, 2010; and

3) March 2, 2010.

[4] An Agreed Statement of Facts was filed at the hearing outlining the events of the three dates.

LEGISLATIVE FRAMEWORK

[5] Section 11.1 (10) of the *Justices of the Peace Act* states:

11.1. (10) After completing the hearing, the panel may dismiss the complaint, with or without a finding that it is unfounded or, if it upholds the complaint, it may,

a) warn the justice of the peace;

b) reprimand the justice of the peace;

c) order the justice of the peace to apologize to the complainant or to any other person;

d) order that the justice of the peace take specified measures, such as receiving education or treatment, as a condition of continuing to sit as a justice of the peace;

e) suspend the justice of the peace with pay, for any period;

f) suspend the justice of the peace without pay, but with benefits, for a period up to 30 days; or

g) recommend to the Attorney General that the justice of the peace be removed from office in accordance with section 11.2.

[6] Neither the Section nor the *Act* elaborate upon the words "upholds the complaint" used in this Section. The Hearing Panel in *Re: Welsh (2009)*, a decision of the Justice of the Peace Review Council, addressed this aspect of the Section. We agree with that Panel's remarks stated at Paragraph 30:

> The terms "judicial misconduct" and "upholding a complaint" are not defined in the *Act;* however, we agree with presenting counsel that decisions of the Canadian Judicial Council and the Ontario Judicial Council that determine whether a judge has engaged in judicial misconduct are apposite to the test we have to apply in determining whether to "uphold" a complaint (pursuant to s. 11.1.(10) of the *Act)* and, if so, whether to apply one or more of the dispositions set out in that subsection which mirrors the same dispositions available to the Ontario Judicial Council under subsection 51.6(11) of the *Courts of Justice Act,* R.S.O. 1990,c. C. 43 (C.J.A.).

[7] Turning to the meaning of "judicial misconduct", an excerpt from *Re: Baldwin (2002)*, a Hearing Panel of the Ontario Judicial Council, is instructive. Being informed by two decisions of the Supreme Court of Canada in *Therrien v. Minister of Justice [2001] 2 S.C.R. 3* and *Moreau-Bérubé v. New Brunswick (Judicial Council), [2002] 1 S.C.R. 249*, the Hearing Panel stated at page 5:

> The purpose of judicial misconduct proceedings is essentially remedial. The dispositions in section 51.6(11) should be invoked, when necessary, in order to restore a loss of public confidence arising from the judicial conduct in issue.
>
> Paraphrasing the test set out by the Supreme Court in *Therrien and Moreau-Bérubé,* the question under s. 51.6(11) is whether the impugned conduct is so seriously contrary to the impartiality, integrity and independence of the judiciary that it has undermined the public's confidence in the ability of the judge to perform the duties of office or in the administration of justice generally **and** (emphasis added) that it is necessary for the Judicial Council to make one of the dispositions referred to in the section in order to restore that confidence.

Hearing Re Justice of the Peace Paul Kowarsky

> It is only when the conduct complained of crosses this threshold that the range of dispositions in s. 51.6(11) is to be considered. Once it is determined that a disposition under s. 51.6(11) is required, the Council should first consider the least serious – a warning – and move sequentially to the most serious – a recommendation for removal – and order only what is necessary to restore the public confidence in the judge and in the administration of justice generally.

THE FACTS

[8] The Panel's factual findings, based upon the Agreed Statement of Facts, are set out below.

[9] The complainant is a courtroom clerk. Justice of the Peace Kowarsky was regularly assigned to preside in the courthouse where the complainant is employed. They were assigned to the same courtroom many times over the course of the two, to two and a half years mentioned in this matter. They had a close working relationship which included His Worship providing some training and mentoring. Also, over the course of time they each had confided with the other over personal matters. The complainant regarded Justice of the Peace Kowarsky as a father figure.

[10] On January 29, 2010, they were each working in their respective capacities in a courtroom. During the course of the proceedings Justice of the Peace Kowarsky got the complainant's attention and made a sexually inappropriate comment to her. The comment was said at least once and was captured on the courtroom audio recording. The comment was not heard by the other courtroom clerk and, as far as can be known, it was not heard by any member of the public. It may have been made a second time.

[11] The sexually inappropriate comment, involving eight words, was very short. It is agreed, and the Panel finds that the comment was not intended to be hurtful. The comment involved an ill-conceived attempt at humour on behalf of His Worship. It involved using a double entendre when making what otherwise would have been an innocent request. Unlike most double entendres, however, the risqué meaning was obvious and the innocent meaning, while available in the circumstances, was obscure. Further, the risqué meaning went beyond being indelicate. Given the circumstances, it was insulting and degrading.

[12] The complainant was very upset. She did not return to the courtroom in the afternoon and was absent the next day. After court adjourned on Jan 29, 2010, Justice of the Peace Kowarsky telephoned her and indicated that his actions had been wrong and

inappropriate, and that he valued her work. He asked that she return his call. She decided not to.

[13] Prior to January 29, 2010, sometime in 2008, Justice of the Peace Kowarsky and the complainant greeted each other prior to being in court together. During this timeframe it was His Worship's custom to greet female colleagues and clerks who he had not seen for a while with a hug. On one such occasion, while greeting the complainant in this way, he commented using words to the effect that some people say hello by kissing on the lips.

[14] Subsequent to January 29, 2010, on March 1, 2010, Justice of the Peace Kowarsky was presiding in court with two clerks. One of them was the complainant. During court His Worship addressed the clerks and stated that they were distracting him and that they were to stop. On the following day, when His Worship and the complainant were once again assigned to the same court His Worship called the complainant to his office and raised what he regarded as the inappropriate behaviour from the day before. During this exchange, the complainant denied inappropriate behaviour and raised Justice of the Peace Kowarsky's behaviour of January 29th. Each voiced their respective positions about January 29th, with His Worship indicating the innocent interpretation of his words and his apology. He also enquired as to what more she wanted. The complainant told him that it (the comment) was inappropriate, and that she looked upon him as a father figure, which is why it upset her tremendously. During this exchange His Worship raised his voice to the point that he could reasonably be considered to be yelling. The complainant was crying and shaking and she stated she wasn't paid enough to be yelled at. Further, she apologized for her behaviour the previous day and she indicated that she would not be in his court the next day.

[15] The complainant subsequently requested not to be assigned to the same courtroom as Justice of the Peace Kowarsky.

[16] In addition to the above findings drawn from the Agreed Statement of Facts, the Panel notes the following about the employment of courtroom clerks. Courtroom clerks are employed by the Court Services Division of the Ministry of the Attorney General and not by the Ontario Court of Justice directly. There is, however, a clear working relationship between a presiding justice of the peace and a courtroom clerk as established by the *Courts of Justice Act* R.S.O. 1990, Chapter C.43, s. 76(2).

> 76.(1) In matters that are assigned by law to the judiciary, registrars, court clerks, court reporters, interpreters and other court staff shall act at the direction of the chief justice of the court. 2006, c.21,Sched. A, s. 14.

(2) Court personnel referred to in subsection (1) who are assigned to and present in a courtroom shall act at the direction of the presiding judge, justice of the peace, master or case management master while the court is in session. 2006, c.21, Sched. A, s.14; 2009, c.33, Sched.2, s.20 (16).

ISSUE OF JUDICIAL MISCONDUCT

[17] Justice of the Peace Kowarsky acknowledged in the Agreed Statement of Facts, and through his counsel at the hearing, that the comment he made on January 29, 2010 constitutes an act of judicial misconduct.

[18] Counsel for Justice of the Peace Kowarsky and Presenting Counsel each submitted in their respective capacities that the facts surrounding the other two dates, set out in the Appendix of the Notice of Hearing and covered in the factual findings above, do not constitute judicial misconduct and should be dismissed.

[19] It is agreed that the facts about these two other dates should be considered in the overall context of the January 29, 2010 complaint.

COMPLAINANT'S RESPONSE

[20] The complainant's immediate reaction to Justice of the Peace Kowarsky's actions is included in the Agreed Statement of Facts and in "The Facts" set out above. Further information was provided, on consent, through Presenting Counsel.

[21] Throughout, the complainant supports the view that His Worship was not at any point being sexually aggressive toward her. The complainant indicates that she respects justices of the peace, including Justice of the Peace Kowarsky. She regarded him as a father figure. She had been going through some difficult times. She wanted to be treated as an equal. The January 29th incident, combined with the events of March 1st and 2nd, left her feeling disrespected and belittled. This led to the complaint which, along with the events themselves, caused her severe anxiety at work. During the following year they both continued to work in the same courthouse. The complainant's schedule was arranged to accommodate her in such a way that she would not be working with His Worship. She found this accommodation made things awkward with coworkers and she also felt that it made others look at her differently. These things also contributed to her anxiety.

Hearing Re Justice of the Peace Paul Kowarsky

JUSTICE OF THE PEACE KOWARSKY'S BACKGROUND AND POST COMPLAINT ACTIONS

[22] Justice of the Peace Kowarsky is 68 years of age. He was a distinguished cantor in South Africa, USA and Canada (Montreal and Toronto). He retired from this in 2001. He received his Bachelor of Laws degree in 1972 in South Africa. He came to Canada in 1976. He came to Toronto with his wife and 5 children in 1980. He remarried in 2001. He also suffered the significant loss of a grandchild in 2007.

[23] His Worship Kowarsky has been a justice of the peace since May, 2002. He has presided in all of the courts to which justices of the peace are assigned including bail court, in particular youth bail court, and also Provincial Offences Court where his work has included trials of lengthy and complex cases. He has had a very active role in mentoring other justices of the peace. He has had duties as a Local Administrative Justice of the Peace. He is well respected by colleagues and others who work with him, including clerks who have been interviewed. There have been no prior complaints.

[24] In the Agreed Statement of Facts, Justice of the Peace Kowarsky acknowledged that his comment on January 29, 2010 was completely inappropriate, unwelcomed, and wrong. He also acknowledged that it deeply upset the complainant.

[25] He made a full apology to the complainant in a letter that was filed in the hearing.

[26] Two unsolicited letters of support from colleagues have been filed. They speak of his integrity, and of his skill and professionalism. It is apparent through counsel's submission that he has not solicited letters of support, not because he couldn't have, but because he chose not to. Particularly with respect to work colleagues, given the complainant's employment, the Panel accepts this as an appropriate approach in the circumstances, as to do otherwise could potentially lead to further discomfort for the complainant in her workplace.

[27] Justice of the Peace Kowarsky sought and has been given approval to be assigned to locations other than the one where the complainant works. Also, if she changes locations he will make similar arrangements. A letter has been filed from Regional Senior Justice Robert Bigelow, dated April 19, 2011. This letter agrees to carry out this scheduling request. The significance of this voluntary accommodation by His Worship has been underlined by Presenting Counsel as being a significant consideration for the complainant and in turn the Panel.

[28] A report authored by Dr. Lori Haskell, Clinical Psychologist, dated April 23, 2011, was filed in the hearing. The purpose of Dr. Haskell's contact was to review appropriate sexual boundaries and behaviours and to assess Justice of the Peace Kowarsky's own understanding of his actions and their repercussions. Dr. Haskell had the benefit of the having the Agreed Statement of Facts.

[29] The material in the report supports finding that His Worship has reflected critically upon his behaviour and its impact upon the complainant. The report canvasses the dynamics of the situation wherein it appears that the hurt and upset caused from his inappropriate comment was intensified by the closeness and expectations they had of one another in what previously had been a comfortable working relationship. With regard to the events of 2008, Dr. Haskell and His Worship discussed his responsibility of being aware of his status and social power and of not crossing boundaries.

[30] Dr. Haskell in her "Summary and Opinion" section notes: she found him to be thoughtful and genuinely remorseful; he had real concern for the harm caused to the complainant; his adjustment in his professional behaviour means he is unlikely to make a similar mistake in the future; and in addition to being more vigilant about his professional behaviour he is aware that his intentions and the impact of his conduct are distinct. She concludes her report by noting:

> "It also appears as if Justice of the Peace Kowarsky has, as a result of these events, an enhanced appreciation for the importance of professional boundaries, and he has reflected critically upon both what he did and its impact on others. The indications are that he is aware and vigilant and, given the process and professional consequences which have unfolded for him, he would be quite unlikely to transgress boundaries in this way in the future."

DISPOSITION

[31] The Panel agrees with the submissions of Counsel that the facts of January 29, 2010 constitute judicial misconduct and the Panel upholds this complaint.

[32] Further, the Panel agrees with the submissions of Counsel that the facts involved in the other two dates particularized in the Notice of Hearing do not constitute judicial misconduct and the Panel dismisses those complaints. The facts did not meet the test set out in paragraph 7 above.

[33] The threshold test, as set out above in greater detail in paragraph 7 ,"is whether the impugned conduct is so seriously contrary to the impartiality, integrity and independence of the judiciary that it has undermined the public's confidence in the ability of the judge to perform the duties of office or in the administration of justice generally **and** (emphasis added) that it is necessary for the Judicial Council to make one of the dispositions referred to in the section in order to restore that confidence."

[34] Returning to the January 29, 2010 complaint, of the aspects listed in first part of the test, the facts concerning that date are seriously contrary to the aspect of the "integrity" "of the judiciary". For the following reasons one would expect that reasonable, fair minded and informed members of the public would have their confidence in the administration of justice undermined as a result.

[35] Firstly, conduct of this nature would not be tolerated from any other participant in the court process particularly when, as here, court is in session. In order to maintain the integrity of the judiciary a presiding judicial officer must conduct himself/herself at least as well as everyone else before the Court. When, as here, actions fall below this level there is an undermining of public confidence in the administration of justice.

[36] Secondly, even though a courtroom clerk is not employed by the Court directly, as noted above, the courtroom clerk acts under the direction of the presiding justice of the peace in the courtroom. In order to maintain the integrity of the judiciary within this framework, the standard of conduct expected in this relationship could reasonably be expected to be analogous to that expected of someone in a supervisory capacity in a more typical working relationship. This conduct fell short of this expectation and as such it is an additional source of the undermining of public confidence in the administration of justice.

[37] The second part of the test is whether it is necessary to make one of the dispositions set out in Section 11.1(10) in order to restore public confidence.

[38] Presenting Counsel submitted that this complaint was judicial misconduct requiring a disposition and advised the panel of available dispositions, but did not take a position as to a specific disposition. Counsel for Justice of the Peace Kowarsky submitted that a reprimand was the appropriate disposition.

[39] The Panel is mindful of the fact that this was a short incident and accepts the context and intent set out in the facts above.

[40] The Panel finds that actions already taken by Justice of the Peace Kowarsky make consideration of some of the possible dispositions unnecessary. These actions include having apologized to the complainant at the time and as part of the hearing process

and having taken appropriate counselling from Dr. Haskell. Dr. Haskell's opinion also confirms the lack of need for further counselling. The Panel commends these actions as they assist in restoring public confidence.

[41] Further, the Panel acknowledges that Justice of the Peace Kowarsky has taken a very significant step in having his assignment adjusted to accommodate the complainant. It is a measure that may not have been achievable in any other way. It is a very positive act for the complainant. It is an act that exhibits integrity and should assist in restoring public confidence.

[42] The Panel's decision is to reprimand Justice of the Peace Kowarsky.

[43] The Panel is confident, based on the evidence at this public hearing, that Justice of the Peace Kowarsky is keenly aware of the meaning and import of this action. Given this, and the steps he has taken on his own, the action of a Reprimand by this Panel is sufficient to restore public confidence in the administration of justice.

Dated at the city of Toronto in the Province of Ontario, May 30th, 2011.

HEARING PANEL:

The Honourable Kathryn L. Hawke, Regional Senior Justice, Chair
Her Worship Cornelia Mews, Senior Justice of the Peace
Mr. Steven G. Silver, Community Member

APPENDIX E

HEARING RE JUSTICE OF THE PEACE SOLANGE GUBERMAN

Hearing Re Justice of the Peace Solange Guberman

JUSTICES OF THE PEACE REVIEW COUNCIL

IN THE MATTER OF A HEARING UNDER SECTION 11.1 OF THE *JUSTICES OF THE PEACE ACT*, R.S.O. 1990, C. J.4, AS AMENDED,

Concerning a complaint about the conduct of Justice of the Peace Solange Guberman

Before: The Honourable Justice Paul M. Taylor, Chair

Her Worship Mary Ross-Hendriks

Dr. Michael Phillips, Community Member

Hearing Panel of the Justices of the Peace Review Council

Decision of October 11, 2011

Counsel:

Ms. Marie Henein	Presenting Counsel
Mr. Julius Grey	Counsel for Her Worship Solange Guberman
Mr. Richard Dearden	Counsel for the Ottawa Citizen (Intervenor)

APPENDIX E

Hearing Re Justice of the Peace Solange Guberman

DECISION: (PRESENTED ORALLY ON OCTOBER 11, 2011)

[1] The Justices of the Peace Review Committee ordered a hearing pursuant to section 11(15) of the *Justice of the Peace Act*, Revised Statutes of Ontario 1990, chapter 14, as amended, into certain complaints regarding the conduct of Her Worship Justice of the Peace Solange Guberman. Today was to be the first day of hearing.

[2] At the commencement of the proceedings today, Ms. Henein, Presenting Counsel, and Mr. Grey, counsel for Justice of the Peace Guberman, filed a letter indicating that the Justice of the Peace had tendered her resignation. Upon her resignation this panel, would statutorily lose jurisdiction to adjudicate on the merits of the complaints. Given that the resignation was not to take effect until a date in the future, we were urged to adjourn the hearing *sine die*, that is, without disposition. In the unlikely event that Her Worship wished to continue in office, the hearing could then be recommenced. The justification for the effective date of the resignation being in the future was that this hearing would consume many days, given the complexity of the complaints, and that it was entirely possible that the matter would not conclude before the effective resignation date.

[3] Mr. Grey, who acts for Justice of the Peace Guberman, has sought an order for non-publication of the Notice of Hearing or, at minimum, an order redacting portions of the Notice. His application was opposed by Presenting Counsel, Ms. Henein, and by Mr. Richard Dearden who appears on behalf of the Ottawa Citizen newspaper. As a preliminary matter, we agreed to hear the application on short notice.

Background and Overview:

[4] A convenient summary of the background to this matter is found in the applicant's factum. On February the 21st, 2007, Her Worship Solange Guberman was sworn in and received her Order in Council as a justice of the peace in the East Region of Ontario. On September the 21st, 2009, her duties were suspended and a letter of complaint was submitted to the Justices of the Peace Review Council.

[5] Following a long and in-depth investigation, a Notice of Hearing was communicated to her on December the 6th, 2010. The set-date took place on the 16th of June 2011 and on this date the first date for a hearing was fixed for today, October the 11th, 2011. A pre-trial conference took place before the Honourable Justice Timothy Lipson on the 21st of July 2011 in Toronto. The pre-trial continued in Montreal on the 7th of September and an agreement was reached by which the respondent would elect to retire in December of 2012. The date set for the hearing was set in June of 2011;

however, a settlement was reached before the hearing ever began. It was decided between the parties, that is, the Presenting Counsel, counsel for the Justice of the Peace and the Justice of the Peace, that a request would be made to the Panel to adjourn the hearing *sine die*. Pursuant to section 6(3) of the procedures of the Justices of the Peace Review Council, two weeks before the hearing was set to commence an announcement was published in the Ottawa Citizen newspaper and the press requested a copy of the Notice of Hearing.

The Positions of the Parties:

[6] Mr. Grey, who acts for the Justice of the Peace, has framed his argument in the following terms in his factum under the heading "Prejudice to Her Worship Justice of the Peace Guberman". The contents of the Notice of Hearing are prejudicial to the applicant. Moreover, many of the allegations are purely of a private nature. When deciding to elect retirement, the applicant gave up her opportunity to have a hearing. She no longer has a chance to defend herself against the complaints or to disprove the allegations contained in the Notice. The applicant is 65 years of age. She has had an accomplished professional career and has every intention of working again. A publication of the Notice of Hearing will greatly prejudice her future employment opportunities. The publication of the Notice of Hearing will also damage her reputation and those of her two young and professional children. Their right to privacy will also be violated. And finally, the contents of the Notice of Hearing being made public will violate the applicant's right to dignity. She has already suffered considerably since the suspension from her functions in 2009.

[7] Mr. Grey expanded those grounds in oral argument. He indicated that there was no need for affidavit material to be filed. He says that the plain text of the allegations are such that their mere publication would make any future employment impossible. He stressed that the allegations were highly personal in nature and that they were unproven.

[8] The position of Presenting Counsel and of counsel for the Ottawa Citizen is straightforward. Both counsel have argued that there was no evidentiary basis upon which the applicant could meet the tests set out in the twin cases of the Supreme Court of Canada of Dagenais and Mentuck. Dagenais v Canadian Broadcasting Corporation, [1994] 3 SCR 835. R. v Mentuck is at [2001] 3 SCR 442. The so-called Dagenais-Mentuck test governs the making of non-publication orders and the holding of in camera hearings.

Analysis:

[9] Open courts and tribunals are a hallmark of a democratic society. The open court principle was developed as part of the evolution of the Common Law and in part as a revulsion over the Court of Star Chamber. At various times, courts throughout Canada have adopted the aphorism of the English philosopher Jeremy Bentham, who stated, "Publicity is the very soul of justice. It is the keenest spur to exertion and the surest of all guards against improbity".

[10] This principle is incorporated into both the *Statutory Powers and Procedures Act* and the Justices of the Peace Review Council Procedures which mandate that all hearings must be open to the public. Section 6 of the Justices of the Peace Review Council Procedures reads:

> 6. (1) "A hearing shall be commenced by a notice of hearing in accordance with this Part.
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> (2) Recognizing the role that the complaints process has in maintaining and restoring public confidence and that the legislative requirements for maintaining privacy no longer apply for formal hearings under section 11.1 of the *Act*, once presenting counsel files the Notice of Hearing as an exhibit in the initial set-date proceeding presided over by the hearing panel, the complaints process will become public, subject to any orders by the hearing panel.
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> (3) Once the complaint has become public, the Registrar will have the notice about the hearing posted in the prescribed form on the Review Council's website, subject to any orders made by the hearing panel. Not less than two weeks prior to the commencement of the hearing, the Registrar will have notice in prescribed form published in the local newspaper. The public notice will include a brief summary of the allegations of conduct."

[11] The Notice of Hearing in this matter was filed as Exhibit 1 in the proceedings slightly more than four months ago, on June the 6th, 2011. The Notice of Hearing was posted on the Justices of the Peace Review Council website together with a brief summary of the allegations. That brief summary reads as follows:

> "Her Worship demonstrated a pattern of conduct which included a failure to perform the duties of office; a failure to exercise judicial duties in a manner that was independent or impartial; there was a denial of rights of defendants; there was a denial of defendants' fundamental rights; inappropriate conduct

towards court staff, her colleagues; was incompetent to sit as a justice of the peace resulting in harm to the public's perception of the judiciary, bringing disrepute upon judicial office, eroding public confidence in that office".

[12] There is a statutory authority in both the *Statutory Powers and Procedures Act* and the Justices of the Peace Review Council Procedures to direct an *in camera* hearing or to make an order of non-publication. Section 9(1) of the *Statutory Powers and Procedures Act* reads:

> "An oral hearing shall be open to the public except where the tribunal is of the opinion that either (a) matters involving public security may be disclosed or (b) intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature that, having regard to the circumstances that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest, outweighs the desirability of adhering to the principle that hearings be open to the public".

[13] Those provisions are incorporated, as I said, in the Justices of the Peace Review Council Procedures.

[14] A succinct summary of the test to be applied when considering an application for non-publication is found in the decision of the Supreme Court of Canada in *Her Majesty the Queen v. Toronto Star Newspapers*, 2005 SCC 41, [2005] 2 SCR 188. At paragraph 26 the Court wrote:

> "The Dagenais test was reaffirmed but somewhat reformulated in Mentuck, where the Crown sought a ban on publication of the names and identities of undercover officers and on the investigative techniques they had used. The Court held that in that case that discretionary action to limit freedom of expression in relation to judicial proceedings encompasses a broad variety of interests and that a publication ban should only be ordered when
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> a) when such order is necessary in order to prevent a serious risk to the proper administration of justice because reasonably alternative measures will not prevent the risk; and
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> b) the salutary effects of the publication ban outweigh the deleterious effects on the rights and interests of the parties and the public, including the effects on the right to free expression, the right of the accused to a fair and public trial, and the efficacy of the administration of justice".

[15] The essential question for this Panel to decide is whether the applicant has met the *Dagenais-Mentuck* test. We are of the view that she has not. While there is no doubt that the allegations of her alleged misconduct have caused considerable embarrassment to Justice of the Peace Guberman, embarrassment alone is not a sufficient reason to grant the order. As the court wrote in *Mentuck* at paragraph 39, "It is precisely because of the presumption that courts should be open and reporting of their proceedings should be uncensored is so strong and so highly valued in our society that the judge must have a convincing evidentiary basis for issuing a ban".

[16] The allegations are not of a private nature. They involve allegations of incompetence and misfeasance of duty during the course of Her Worship's performance of judicial duties. Many of the allegations involve actions which occurred in public and open courtrooms.

[17] Judicial officers can and should expect scrutiny of their behaviour. It is something that goes with the office. It cannot be said that a judicial officer retains any privacy in the exercise of their judicial function, particularly where it is occurring in an open and public courtroom.

[18] Mr. Grey has suggested that any prospective employer who reviewed the allegations would conclude that something was seriously wrong with Justice of the Peace Guberman and would refuse to employ her. This, in our view, is entirely speculative. The allegations are just that, unproven allegations. Any reasonable, right thinking Canadian citizen would recognize that. Contrary to what is suggested in the applicant's factum, Justice of the Peace Guberman didn't have to refute the allegations. They would remain unproven unless and until Presenting Counsel could prove them.

[19] Mr. Grey suggested that it would be sufficient to release a redacted version of the complaints rather than the full particulars. We see very little difference between a release of a redacted version, for example as it appeared on the website, and the release of the full complaint. If Mr. Grey is correct that employers would shun Justice of the Peace Guberman, a premise that we disagree with, they would have fertile ground even based on a redacted version of the complaint.

[20] Mr. Grey relied principally in the course of his argument on the decision of the Quebec Court of Appeal *C. v. B,* 1990, CanLii, 3132. The case is distinguishable on a number of basis, not the least of which is that it antedates both *Dagenais* and *Mentuck*. Another reason to distinguish the matter is that it involved a civil dispute between two parties. Such disputes are essentially private and in that particular case it was settled without trial.

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[21] There is a further matter to consider. The resignation of Her Worship Justice of the Peace Guberman ousts our jurisdiction to adjudicate on the issues. We will make no finding. The resignation, however, does not come into effect for approximately 14 months. The rationale for that relatively long time period is that the allegations are complex and that they would involve a great deal of time to consider and adjudicate, ultimately that there wouldn't be sufficient time to conclude the hearing before the resignation would take effect. The public have a right to look at the complaints and the particulars and make their own informed judgment as to that rationale. The result is that the application for an order of non-publication of the Notice of Hearing, Exhibit 1, is dismissed.

[22] It is common in situations such as this to allow a period of time in which to launch an appeal. Mr. Grey confirmed that Her Worship Guberman would not be seeking judicial review so no order is necessary to delay the release of the Notice of Hearing to the public.

[23] On the request of Mr. Dearden, Counsel for the Ottawa Citizen, the Panel releases him from his undertaking of confidentiality with respect to the copy of the Notice of Hearing which had been provided to him for the purposes of preparing for the motion.

The Panel orders the hearing adjourned *sine die*.

Dated at the City of Ottawa in the Province of Ontario, October 11th, 2011.

HEARING PANEL:

The Honourable Justice Paul M. Taylor, Chair

Her Worship Mary Ross-Hendriks

Dr. Michael Phillips, Community Member